

No. 12515

2638

United States
Court of Appeals
For the Ninth Circuit.

RALPH BARRY, as Trustee in Bankruptcy of
CENTRAL AUTO SUPPLY COMPANY, a
Corporation, Bankrupt,

Appellant.

vs.

LAWRENCE WAREHOUSE COMPANY, a Cor-
poration, and THE VALLEY NATIONAL
BANK OF PHOENIX, a National Banking
Association,

Appellees.

Transcript of Record

Appeal from the United States District Court
District of Arizona.

FILED
MAY 23 1950

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court
for the District of Arizona

No. Civ 1102 Phx.

RALPH BARRY as Trustee in Bankruptcy of
Central Auto Supply Company, a Corporation,
Bankrupt,

Plaintiff,

vs.

LAWRENCE WAREHOUSE COMPANY, a Cor-
poration, and THE VALLEY NATIONAL
BANK OF PHOENIX, a National Banking
Association,

Defendants.

COMPLAINT

(Action to avoid illegal transfer of person-
alty and to recover possession—jurisdiction
asserted under Section 70 of the Bankruptcy
Act; 11 U. S. C. Chap. 7, Sec. 110)

Plaintiff alleges:

I.

Central Auto Supply Company is a corporation duly organized and existing under the laws of the State of Arizona. On July 22, 1947, said Central Auto Supply Company was duly adjudicated a bankrupt in and by this court. Thereafter plaintiff, Ralph Barry, was duly appointed as trustee of said bankrupt and its estate, and he duly qualified as

such and is now the duly qualified and acting trustee in bankruptcy of said bankrupt corporation and its estate. He has been duly authorized by the Referee in Bankruptcy, to whom said bankruptcy proceeding was duly referred, to bring and prosecute this action. Defendant Lawrence Warehouse Company is a corporation duly organized and existing under the laws of the State of California and duly licensed to transact business within the State of Arizona. Defendant The Valley National Bank of Phoenix is a national banking association duly organized and existing under the laws of the United States of America and having its principal place of business at Phoenix in the State of Arizona.

II.

At all times herein mentioned, to and until its adjudication as a bankrupt as aforesaid, said Central Auto Supply Company was engaged in business as a merchant and maintained its place of business at 601-603 East Adams Street in Phoenix, Maricopa County, Arizona. At all such times said Central Auto Supply Company was the owner of a stock of goods, wares and merchandise which it kept and maintained at its place of business aforesaid and daily exposed the same to sale in parcels in the regular course of its merchandise business aforesaid.

III.

For the purpose of attempting to create a lien upon, or transfer of interest in, said entire stock

of goods, wares and merchandise, in violation of the provisions of Section 62-522 of the Arizona Code of 1939, the said Lawrence Warehouse Company did, prior to the adjudication of said Central Auto Supply Company as a bankrupt as aforesaid, issue to said Central Auto Supply Company certain documents in the form of warehouse receipts, wherein and whereby said Lawrence Warehouse Company recited that said stock of goods, wares and merchandise was held by it in storage for said Central Auto Supply Company, and said Central Auto Supply Company did assign and deliver said so-called warehouse receipts to said The Valley National Bank of Phoenix as attempted security for loans by said Bank made to said Central Auto Supply Company. At all times thereafter, to and until its adjudication in bankruptcy as aforesaid, said Central Auto Supply Company remained in the actual and physical possession of said goods, wares and merchandise and had the actual control and merchandising and sale thereof and did actually make daily sales therefrom.

IV.

At or shortly subsequent to said adjudication in bankruptcy, said The Valley National Bank of Phoenix and said Lawrence Warehouse Company placed locks upon the place of business of said Central Auto Supply Company hereinbefore referred to and caused the same to be locked, and they have at all times since refused to permit the plaintiff to

have the actual or physical possession of said goods, wares and merchandise or any part thereof, although plaintiff is vested with the title thereto and the right of possession thereof under Section 70 of the Act of Congress relating to bankruptcy, as amended.

V.

The actual value of said goods, wares and merchandise is, as plaintiff is informed and believes and therefore alleges, the sum of forty-three thousand dollars.

Wherefore, plaintiff demands judgment:

1. Adjudging that said defendants are not, nor is either of them, entitled to the possession of said properties in whole or in part and directing the delivery of such properties to this plaintiff, or, in the alternative, if said properties cannot be so delivered by said defendants that plaintiff recover the value thereof, to wit the sum of forty-three thousand dollars, from the defendants and each of them;
2. For plaintiff's costs herein incurred;
3. For such other and further relief as the court shall find proper in the premises.

DAVID E. WILSON,
ALLAN K. PERRY,

Attorneys for Plaintiff.

By /s/ ALLAN K. PERRY.

[Endorsed]: Filed September 9, 1947.

[Title of District Court and Cause.]

ANSWER TO COMPLAINT

Comes now, Lawrence Warehouse Company, and answering the Complaint herein on file, admits, denies and alleges as follows, to wit:

I.

Admits the allegations of paragraph I of plaintiff's complaint.

II.

Answering paragraph II, this answering defendant admits that to and until the adjudication of Central Auto Supply Company, in bankruptcy, said company was engaged in business as a merchant and maintained a place of business at 601-3 East Adams Street, in Phoenix, Arizona. Except for such admission, this defendant denies, each and every, all and singular the allegations of said paragraph II.

III.

Answering paragraph III, this answering defendant alleges that long prior to the adjudication of Central Auto Supply Company, as a bankrupt, said Central Auto Supply Company transferred to Lawrence Warehouse Company certain goods, wares and merchandise and that said Lawrence Warehouse Company took the same into its possession and placed the same in its own premises, which premises and goods were at that time and at all

times thereafter under the sole and exclusive control of employees of Lawrence Warehouse Company; that at the time that said Central Auto Supply Company delivered said goods to Lawrence Warehouse Company and at the request of said Central Auto Supply Company, Lawrence Warehouse Company issued its non-negotiable warehouse receipts in accordance with the uniform Warehouse Receipts Act of the State of Arizona to defendant, The Valley National Bank of Phoenix, and thereafter and at all times to and including the date hereof, Lawrence Warehouse Company has retained the exclusive and absolute possession of said goods, wares and merchandise, subject to the written order of The Valley National Bank of Phoenix.

Further answering said paragraph III, this answering defendant denies that said transfer was in violation of the provisions of Section 62-522 of the Arizona Code of 1939, or to any law or any section of said code, and denies that prior to the adjudication of said Central Auto Supply Company, as a bankrupt, or at any other time, it issued to said Central Auto Supply Company certain documents in the form of warehouse receipts or in any other form, wherein and whereby said Lawrence Warehouse Company recited that said stock of goods, wares and merchandise were held by it in storage for said Central Auto Supply Company, and further denies that said Central Auto Supply Company did assign and deliver said so-called warehouse receipts to The Valley National Bank of Phoenix, or any other person or persons, and fur-

ther denies that at all times thereafter, or at all, after the date of the delivery of said goods, wares and merchandise to Lawrence Warehouse Company said Central Auto Supply Company, or any other person or persons, except Lawrence Warehouse Company remained in actual or physical possession of said goods, wares and merchandise or had the actual control or merchandising or sale thereof, or did actually make daily sales therefrom, except that this answering defendant alleges that from time to time upon written instructions of defendants, The Valley National Bank of Phoenix, and in accordance with the Warehouse Receipts Act, and the warehouse receipts issued to said Bank, this answering defendant delivered from the warehouse certain designated and described merchandise.

IV.

Denies each and every, all and singular, the allegations of paragraph IV of plaintiff's complaint, except only that this defendant admits that it has refused to permit plaintiff to have the actual or physical possession of the goods, wares and merchandise, or any part thereof now stored in the warehouse of Lawrence Warehouse Company; and in this respect this defendant further alleges that at all times since it acquired the premises upon which it maintains the warehouse for the storage of the goods, wares and merchandise herein involved, it has maintained and now does maintain the sole and exclusive possession of said premises and said goods and has kept and now does keep the said premises

locked with its own locks to which only its own employees have had keys, and that at all times when said employee or employees of defendant, Lawrence Warehouse Company, were and are not present said premises have remained and now remain locked with said locks.

V.

This answering defendant has no information or belief sufficient to enable it to answer the allegations of paragraph V of plaintiff's complaint, and basing its denial upon such lack of information and belief, denies each and every, all and singular, said allegations.

Wherefore, defendant prays judgment that plaintiff's complaint be dismissed hence; that defendant have judgment for its cost of suit herein incurred, and for such other and further relief as to this court may seem meet and proper in the premises.

FENNEMORE, CRAIG,
ALLEN & BLEDSOE,
By /s/ WALTER E. CRAIG.

WILLIAMSON & WALLACE,
By /s/ WILLIAM R. RAY.

State of California
County of Los Angeles—ss.

E. C. Yuille, being duly sworn, deposes and says:
That he is an officer, to wit, the Vice-President of Lawrence Warehouse Company, a corporation,

defendant named in the foregoing Answer to Complaint, and as such officer of said corporation makes this verification for and on its behalf; that he has read said Answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

/s/ E. C. YUILLE.

Subscribed and sworn to before me this 11th day of October, 1947.

[Seal] /s/ FLORENCE LEWENTHAL,
Notary Public in and for the City and County of
Los Angeles, State of California.

My Commission Expires Dec. 5, 1949.

Receipt of copy acknowledged.

[Endorsed]: Filed October 15, 1947.

[Title of District Court and Cause.]

ANSWER OF DEFENDANT, THE VALLEY
NATIONAL BANK OF PHOENIX

Comes Now the defendant, The Valley National Bank of Phoenix, a national banking association, and for its answer to plaintiff's complaint, admits, denies and alleges as follows:

I.

Said defendant admits the allegations contained in paragraph I of plaintiff's complaint.

II.

In answer to Paragraph II of plaintiff's com-

plaint, this defendant admits that Central Auto Supply Company was engaged in business as a merchant and maintained a place of business at 601-603 East Adams Street, in the City of Phoenix, Maricopa County, Arizona. Except for such admission, this defendant denies each and every allegation contained in paragraph II.

III.

This defendant denies each and every allegation contained in paragraph III of plaintiff's complaint, and in this connection alleges as follows: that prior to its incorporation under the laws of the State of Arizona Central Auto Supply Company was a co-partnership, doing business in the City of Phoenix, Maricopa County, Arizona, under the name and Style of Central Auto Supply; that Central Auto Supply Company, a corporation, succeeded to the interest of said co-partnership; that the defendant, Lawrence Warehouse Company, is engaged in the business of field warehousing and in the course of its business said Lawrence Warehouse Company entered into a certain agreement with the Central Auto Supply, and upon organization of the corporation, Central Auto Supply Company, said Lawrence Warehouse Company entered into a further agreement with said corporation, under the terms of which said Lawrence Warehouse Company leased certain premises at 601 East Adams Street, in the City of Phoenix, Arizona, and took possession of said premises pursuant to the terms of said lease and at all times mentioned

in plaintiff's complaint, said Lawrence Warehouse Company was, and now is, in the possession of the said premises.

That this defendant, The Valley National Bank of Phoenix, said Lawrence Warehouse Company, and said Central Auto Supply, a co-partnership, entered into a certain pledge and warehouse agreement, under the terms of which certain goods, wares and merchandise were placed in the sole and exclusive possession of said Lawrence Warehouse Company and stored on the premises held by it under said lease. That pursuant to the terms of said agreement and the instructions of said Central Auto Supply, certain warehouse receipts were issued, pursuant to the Warehouse Receipt Act of the State of Arizona, in Section 52-801 et seq., Arizona Code 1939, to The Valley National Bank of Phoenix.

That after the organization of said corporation, said agreement between this defendant, said Lawrence Warehouse Company and said Central Auto Supply was extended by agreement of all of said parties to said Central Auto Supply Company, a corporation, which had succeeded to all of the property, interest and business of said Central Auto Supply, a former co-partnership.

That at all times herein mentioned, the goods, wares and merchandise, the possession of which is claimed by the plaintiff in his complaint, have been in the actual and exclusive physical possession and control of said Lawrence Warehouse Company, and this defendant, The Valley National Bank of

Phoenix, has held warehouse receipts issued by said Lawrence Warehouse Company to this defendant for all of the goods, wares and merchandise stored in said warehouse. That this defendant now owns and holds warehouse receipts No. 69891 to No. 69900, both inclusive, No. 72851 to No. 72859, both inclusive, and No. 72861, No. 72862, No. 72864 and No. 72865; that all of said warehouse receipts were issued to this defendant for monies actually loaned to said Central Auto Supply or said Central Auto Supply Company, a corporation.

The amount now owed to this defendant by said Central Auto Supply Company, a corporation, on July 21, 1947, was Thirty-one Thousand One Hundred Fifty-five and $84/100$ Dollars (\$31,155.84), which amount has since been reduced to the sum of Thirty thousand Eight Hundred Thirty-five and $33/100$ Dollars (\$30,835.33) by the payment to this defendant, by the receiver of said Central Auto Supply Company, a corporation, of the sum of One Hundred Ninety-two and $20/100$ (\$192.20), for which merchandise, upon the instructions of this defendant, was released from said warehouse and delivered to said receiver.

IV.

Answering paragraph IV of plaintiff's complaint, this defendant denies each and every allegation therein contained, and in this connection alleges that the goods, wares and merchandise referred to in plaintiff's complaint were in the possession of the defendant, Lawrence Warehouse Company, long prior to the bankruptcy of Central

Auto Supply Company, a corporation, and at all times since the first taking possession thereof by the said Lawrence Warehouse Company as a warehouseman, and said warehouseman has made no delivery of any thereof to any person whomsoever, except upon the order of this defendant, as the holder of warehouse receipts issued on said goods, wares and merchandise; that this defendant is informed and believes and upon such information and belief states that on August 30, 1947, there was due and owing from said Central Auto Supply Company, a corporation, to said warehouseman the sum of Two Thousand One Hundred Ninety Seven and 71/100 Dollars (\$2,197.71) for services rendered in the storing and warehousing of said goods, wares and merchandise.

V.

This defendant is without knowledge or information sufficient to form a belief as to the truth of the averments of paragraph V of plaintiff's complaint.

Wherefore, this defendant prays judgment that plaintiff take nothing by his complaint and that this defendant have and recover its costs.

GUST, ROSENFELD,
DIVELBESS, ROBINETT
& LINTON,

By /s/ J. L. GUST,
Attorneys for Defendant, The Valley National Bank
of Phoenix.

Receipt of Copy attached.

[Endorsed]: Filed October 15, 1947.

[Title of District Court and Cause.]

MINUTE ENTRY

Thursday, March 17, 1949

Honorable Dave W. Ling, United States District Judge, Presiding.

This case come on regularly for trial this day. The plaintiff, Ralph Barry, is present in person with his counsel, Allan K. Perry, Esq. Walter Craig, Esq. appears as counsel for the defendant, Lawrence Warehouse Company. John L. Gust, Esq., appears as counsel for the defendant, Valley National Bank. On motion of Walter Craig, Esq.,

It Is Ordered that William R. Ray be and he is admitted to practice specially in this case as associate counsel for the defendant, Lawrence Warehouse Company. Louis L. Billar is present as official reporter.

Both sides announce ready for trial.

Plaintiff's Case:

Robert E. Kersting is now duly sworn and examined on behalf of the plaintiff.

The following plaintiff's exhibits are now admitted in evidence:

Exhibit 1, Field Warehouse Lease.

Exhibit 2, Deposition of Harry Stock.

Exhibit 3, Deposition of C. D. Cadot.

Exhibit 4, Deposition of Paul S. Godber.

- Exhibit 5, Deposition of J. C. Baldwin.
- Exhibit 6, Deposition of E. R. Tolfree.
- Exhibit 7, Deposition of F. A. Warburton, Jr.
- Exhibit 8, Deposition of M. Blackburn.
- Exhibit 9, Deposition of David Shapiro.
- Exhibit 10, Deposition of F. C. Westphal.

Whereupon the plaintiff rests.

Walter Craig, Esq., now moves for judgment for the defendants due to plaintiff's failure to prove allegations of plaintiff's complaint.

It Is Ordered that said Motion be and it is denied.

Defendants' Case:

Defendant, Lawrence Warehouse Company's Exhibit D, Deposition of C. W. Saxon, is now admitted in evidence.

Harold A. Mitchell is now duly sworn and examined on behalf of the defendants.

Defendant, Lawrence Warehouse Company's Exhibit A, 10 photographs, is now admitted in evidence.

And thereupon, at the hour of 12:05 o'clock p.m., It Is Ordered that the further trial of this case be continued until 1:30 o'clock p.m., this date, to which time the parties and respective counsel are excused.

Subsequently, at the hour of 1:30 o'clock p.m., the parties and their respective counsel being present pursuant to recess, further proceedings of trial are had as follows:

Defendants' Case Continued:

Harold A. Mitchell, heretofore sworn, is now re-

called and further examined on behalf of the defendants.

Defendant, Lawrence Warehouse Company's Exhibit E, Warehouse receipt, is now admitted in evidence.

Defendant, Lawrence Warehouse Company's Exhibit F, Delivery form, is now admitted in evidence.

William H. Miller is now duly sworn and examined on behalf of the defendants.

Austin K. Wildman is now duly sworn and examined on behalf of the defendants.

William J. Riley is now duly sworn and examined on behalf of the defendants.

Whereupon, the Defendants rest.

Both sides rest.

It Is Ordered that the plaintiff be allowed 20 days in which to file opening brief, and that the defendant be allowed 10 days thereafter in which to file answering brief.

[Title of District Court and Cause.]

MINUTE ENTRY

Wednesday, October 5, 1949

Honorable Dave W. Ling, United States District Judge, Presiding.

It Is Ordered that the record show this case is now submitted and taken under advisement.

[Title of District Court and Cause.]

MINUTE ENTRY

Thursday, November 3, 1949

Honorable Dave W. Ling, United States District Judge, Presiding.

This case having been submitted and taken under advisement,

It Is Ordered that the defendants have judgment herein.

[Title of District Court and Cause.]

MINUTE ENTRY

Thursday, February 23, 1950

Honorable Dave W. Ling, United States District Judge, Presiding.

It Is Ordered that the Plaintiff's Motion for New Trial be and it is denied.

[Docketed]: Feb. 23, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT

The above-entitled matter having come on for trial before the Court March 17, 1949, the plaintiff appearing in person and by his counsel, David E. Wilson and Allan K. Perry; and the defendant Lawrence Warehouse Company, a corporation, having ap-

peared by its counsel, Messrs. Fennemore, Craig, Allen and Bledsoe and William R. Ray; and the defendant Valley National Bank, Phoenix, a national banking association, having appeared by its counsel, Messrs. Gust, Rosenfeld, Divelbess, Robiette & Linton; and evidence having been introduced by all parties to said action; and the matter having been submitted to the Court and memorandum briefs having been filed by all parties, and the Court being fully advised in the premises, finds as follows:

Findings Of Fact

I.

Long prior to filing its petition in bankruptcy Central Auto Supply Company transferred to Lawrence Warehouse Company for deposit certain goods, wares and merchandise.

II.

Said goods, wares and merchandise were deposited in the field warehouse of Lawrence Warehouse Company theretofore leased by it from Central Auto Supply Company, and remained in the possession and control of the said Lawrence Warehouse Company thereafter.

III.

At the time said goods, wares and merchandise were deposited with the said Lawrence Warehouse Company, that company issued certain uniform non-negotiable warehouse receipts at the direction

of the depositor, Central Auto Supply Company and in favor of the Valley National Bank, Phoenix, a national banking association.

IV.

Said uniform non-negotiable warehouse receipts were held by said bank as security for a loan in favor of Central Auto Supply Company.

V.

Said transactions were in conformity with the usual commercial practice known as field warehousing.

Conclusions Of Law

I.

The field warehouse lease between Central Auto Supply Company as lessor, and Lawrence Warehouse Company as lessee, dated July 30, 1946, was a valid existing contract between the parties thereto. The field warehouse storage agreement dated July 26, 1946, was a valid existing contract between the parties thereto. The pledge and warehousing agreement dated July 30, 1946, was a valid existing contract between the parties thereto. The field warehouse lease dated March 17, 1947, was a valid existing contract between the parties thereto. The field warehouse storage agreement dated May 23, 1947, was a valid existing contract between the parties thereto. The pledge and warehousing agreement dated March 17, 1947, was a valid existing contract between the parties thereto.

II.

The non-negotiable warehouse receipts issued by Lawrence Warehouse Company at the direction of the depositor, Central Auto Supply Company, in favor of the Valley National Bank, Phoenix, a national banking association, were valid warehouse receipts within the Arizona Uniform Warehouse Receipts Act, being Sections 52-801 through 52-849, Arizona Code 1939.

III.

The pledge of the non-negotiable warehouse receipts and the pledge of such goods, wares and merchandise deposited with Lawrence Warehouse Company as warehousemen in favor of the Valley National Bank, Phoenix, as security for a loan to the Central Auto Supply Company, was a valid pledge as between the parties thereto and as against the plaintiff herein as trustee in bankruptcy of the Central Auto Supply Company and as against third parties, general creditors or otherwise.

Wherefore, It Is Ordered, Adjudged and Decreed that plaintiff take nothing by his complaint, and defendants, and each of them, have their costs herein expended.

. Dated: January 17, 1950.

/s/ DAVE W. LING,

Judge.

Receipt of Copy acknowledged.

[Endorsed]: Filed December 13, 1949.

[Endorsed]: Filed and Docketed January 17, 1950.

[Title of District Court and Cause.]

PLAINTIFF'S OBJECTIONS TO FINDINGS
OF FACT AND CONCLUSIONS OF LAW
PROPOSED BY DEFENDANTS.

I.

The plaintiff objects to the defendants' proposed finding of fact number I, for the reason that there is no evidence to support the same.

II.

The plaintiff objects to the defendant's proposed finding of fact number II, for the reason that there is no evidence to support the same.

III.

The plaintiff objects to the defendants' proposed finding of fact number III, for the reason that there is no evidence to support the same.

IV.

The plaintiff objects to the defendants' proposed finding of fact number IV, for the reason that there is no evidence to support the same.

V.

The plaintiff objects to the defendants' proposed finding of fact number V, for the reason that there is no evidence to support the same.

VI.

The plaintiff objects to the defendants' proposed conclusion of law number I, for the reason that the

same is contrary to the law applicable to the factual situation by the evidence presented.

VII.

The plaintiff objects to the defendants' proposed conclusion of law number II, for the reason that the same is contrary to the law applicable to the factual situation by the evidence presented.

VIII.

The plaintiff objects to the defendants' proposed conclusion of law number III, for the reason that the same is contrary to the law applicable to the factual situation by the evidence presented.

IX.

Based upon the admissions of the parties and the evidence adduced at the trial, plaintiff is entitled to the following findings of fact and he hereby requests the court to make and enter the same:

1. Central Auto Supply Company is a corporation, duly organized and existing under the laws of the State of Arizona. On July 22, 1947, said Central Auto Supply Company was duly adjudicated a bankrupt in and by this court. Thereafter plaintiff Ralph Barry was duly appointed as trustee of said bankrupt and its estate, and he duly qualified as such and is now the duly qualified and acting trustee in bankruptcy of said bankrupt corporation and its estate. He has been duly authorized by the Referee in Bankruptcy, to whom said bankruptcy proceeding was duly referred, to bring and prose-

ecute this action. Defendant Lawrence Warehouse Company is a corporation duly organized and existing under the laws of the State of California and duly licensed to transact business within the State of Arizona. Defendant The Valley National Bank of Phoenix is a national banking association, duly organized and existing under the laws of the United States of America and having its principal place of business at Phoenix, within the State of Arizona.

2. At all times here material, to and until its adjudication as a bankrupt as aforesaid, said Central Auto Supply Company was engaged in business as a merchant, and maintained its place of business at 601-603 East Adams Street, in Phoenix, Maricopa County, Arizona. At all such times said Central Auto Supply Company was the owner of a stock of goods, wares and merchandise, which it kept and maintained at its place of business aforesaid, and daily exposed the same to sale in parcels in the regular course of its merchandise business aforesaid.

3. For the purpose of attempting to create a lien upon or transfer of interest in said entire stock of goods, wares and merchandise, in violation of the provisions of section 62-522 of the Arizona Code of 1939, said Lawrence Warehouse Company did, prior to the adjudication of said Central Auto Supply Company as a bankrupt as aforesaid, issue to said The Valley National Bank of Phoenix certain documents in the form of non-negotiable warehouse receipts, wherein and whereby said Lawrence

Warehouse Company recited that said stock of goods, wares and merchandise was held by it in storage for said The Valley National Bank of Phoenix as attempted security for loans made by said The Valley National Bank of Phoenix to said Central Auto Supply Company.

4. At all times thereafter, to and until its adjudication in bankruptcy as aforesaid, said Central Auto Supply Company remained in the actual and physical possession of said goods, wares and merchandise, and had the actual control and merchandising and sale thereof and did actually make daily sales therefrom.

5. The amount owing by Central Auto Supply Company to The Valley National Bank of Phoenix, as of the day of the date of its adjudication in bankruptcy herein, was thirty-one thousand one hundred fifty-five and $84/100$ dollars, which was reduced by the sum of one hundred ninety-two and $20/100$ dollars by the payment to said bank by the receiver of said Central Auto Supply Company of said sum of one hundred ninety-two and $20/100$ dollars leaving a balance owing by said bankrupt corporation to said bank of thirty thousand eight hundred thirty-five and $53/100$ dollars.

X.

Based upon the admissions of the parties and the evidence adduced at the trial, the court should make and enter the following conclusions of law:

1. The court has jurisdiction over the parties and of the subject matter, under the provisions of

Section 70 of the Bankruptcy Act, 11 U.S.C. Chapter 7, section 110.

2. The entire scheme of "field warehousing," as disclosed by the record, is contrary to and violative of the provisions of section 62-522 of the Arizona Code of 1939; and the lien or pledge of merchandise contemplated by such scheme is void as to general creditors of the bankrupt.

3. The plaintiff herein, as trustee in bankruptcy of Central Auto Supply Company, represents in this action the general creditors of the bankrupt.

4. Section 62-522 of the Arizona Code of 1939 was not repealed or modified, in whole or in part, by implication or otherwise, by the adoption of the uniform warehouse receipt act in Arizona.

5. The defendants are not, nor is either of them, entitled to the possession of the stock of goods, wares and merchandise, in whole or in part.

6. The plaintiff is vested with the title to said stock of goods, wares and merchandise, and the whole thereof, and the right of possession thereof, under the provisions of Section 70 of the Act of Congress Relating to Bankruptcy, as amended.

7. Plaintiff is entitled to judgment, as prayed in his complaint.

DAVID E. WILSON,

ALLAN K. PERRY,

Attorneys for Plaintiff.

By /s/ ALLAN K. PERRY.

[Endorsed]: Filed December 16, 1949.

[Title of District Court and Cause.]

PLAINTIFF'S MOTION FOR NEW TRIAL

Plaintiff moves the court to vacate the judgment rendered January 17, 1950, in the above-numbered and entitled action, and to grant a new trial of said cause, for the following reasons and upon the following ground:

1. The judgment rendered is not justified by the evidence and is contrary to law.

2. The court has not made adequate findings of fact upon the issues presented by the pleadings.

3. The findings of fact proposed by the defendant Lawrence Warehouse Company and signed by the District Judge do not warrant the conclusions of law so made and signed and do not support the judgment.

4. For all of the reasons set forth in the "Plaintiff's Objections to Findings of Fact and Conclusions of Law Proposed by Defendants," filed herein December 16, 1949, which is hereby referred to and by such reference incorporated into and made a part of this motion for new trial.

DAVID E. WILSON,
ALLAN K. PERRY,

Attorneys for Plaintiff.

By /s/ ALLAN K. PERRY.

Memorandum of Points and Authorities Relied
Upon in Support of the Foregoing Motion

In support of the foregoing motion, the plaintiff relies upon the argument and authorities contained in the "Brief on Behalf of the Plaintiff," heretofore filed herein and by reference made a part hereof.

[Endorsed]: Filed January 19, 1950.

[Title of District Court and Cause.]

PLAINTIFF'S NOTICE OF APPEAL

Notice Is Hereby Given that the plaintiff above named hereby appeals to the United States Court of Appeals for the Ninth Circuit, from the judgment of the United States District Court for the District of Arizona, rendered and entered January 17, 1950, and from the whole of said judgment, and from the order of said District Court entered February 23, 1950, denying the plaintiff's motion for new trial.

/s/ ALLAN K. PERRY,
Attorney for Plaintiff.

[Endorsed]: Filed February 27, 1950.

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH
PLAINTIFF INTENDS TO RELY UPON
HIS APPEAL

The plaintiff above named, who, concurrently with the filing of this statement, has perfected an appeal to the United States Court of Appeals for the Ninth Circuit, from the judgment of the United States District Court for the District of Arizona, rendered January 17, 1950, and the order of said District Court denying said plaintiff's motion for new trial entered February 23, 1950, intends to rely upon the following points upon his appeal to the United States Court of Appeals, viz:

1. The judgment rendered is not justified by the evidence and is contrary to law.

2. The District Court failed to make adequate findings of fact upon the issues presented by the pleadings.

3. The findings of fact proposed by the defendant Lawrence Warehouse Company and signed by the District Judge do not warrant the conclusions of law so made and signed and do not support the judgment.

4. There is no evidence to support finding of fact No. I as settled by the District Judge.

5. There is no evidence to support finding of fact No. II as settled by the District Judge.

6. There is no evidence to support finding of fact No. III as settled by the District Judge.

7. There is no evidence to support finding of fact No. IV as settled by the District Judge.

8. There is no evidence to support finding of fact No. V as settled by the District Judge.

9. The District Court's conclusion of law No. I is contrary to the law applicable to the factual situation presented by the evidence.

10. The District Court's conclusion of law No. II is contrary to the law applicable to the factual situation presented by the evidence.

11. The District Court's conclusion of law No. III is contrary to the law applicable to the factual situation presented by the evidence.

12. Based upon the admissions of the parties and the evidence adduced at the trial, the plaintiff is entitled to the following findings of fact, and the District Court erred in refusing to make such findings:

(a) Central Auto Supply Company is a corporation, duly organized and existing under the laws of the State of Arizona. On July 22, 1947, said Central Auto Supply Company was duly adjudicated a bankrupt in and by this court. Thereafter plaintiff Ralph Barry was duly appointed as trustee of said bankrupt and its estate, and he duly qualified as such and is now the duly qualified and acting trustee in bankruptcy of said bankrupt corporation and its estate. He has been duly authorized by the Referee in Bankruptcy, to whom said bankruptcy proceeding was duly referred, to bring and prosecute this action. Defendant Lawrence Warehouse Company is a corporation duly organized and exist-

ing under the laws of the State of California and duly licensed to transact business within the State of Arizona. Defendant The Valley National Bank of Phoenix is a national banking association, duly organized and existing under the laws of the United States of America and having its principal place of business at Phoenix, within the State of Arizona.

(b) At all times here material, to and until its adjudication as a bankrupt as aforesaid, said Central Auto Supply Company was engaged in business as a merchant, and maintained its place of business at 601-603 East Adams Street, in Phoenix, Maricopa County, Arizona. At all such times said Central Auto Supply Company was the owner of a stock of goods, wares and merchandise, which it kept and maintained at its place of business aforesaid, and daily exposed the same to sale in parcels in the regular course of its merchandise business aforesaid.

(c) For the purpose of attempting to create a lien upon or transfer of interest in said entire stock of goods, wares and merchandise, in violation of the provisions of section 62-522 of the Arizona Code of 1939, said Lawrence Warehouse Company did, prior to the adjudication of said Central Auto Supply Company as a bankrupt as aforesaid, issue to said The Valley National Bank of Phoenix certain documents in the form of non-negotiable warehouse receipts, wherein and whereby said Lawrence Warehouse Company recited that said stock of goods, wares and merchandise was held by it in storage

for said The Valley National Bank of Phoenix as attempted security for loans made by said The Valley National Bank of Phoenix to said Central Auto Supply Company.

(d) At all times thereafter, to and until its adjudication in bankruptcy as aforesaid, said Central Auto Supply Company remained in the actual and physical possession of said goods, wares and merchandise, and had the actual control and merchandising and sale thereof and did actually make daily sales therefrom.

(e) The amount owing by Central Auto Supply Company to The Valley National Bank of Phoenix, as of the day of the date of its adjudication in bankruptcy herein, was thirty-one thousand one hundred fifty-five and $84/100$ dollars, which was reduced by the sum of one hundred ninety-two and $20/100$ dollars by the payment to said bank by the receiver of said Central Auto Supply Company of said sum of one hundred ninety-two and $20/100$ dollars leaving a balance owing by said bankrupt corporation to said bank of thirty thousand eight hundred thirty-five and $53/100$ dollars.

13. Based upon the admissions of the parties and the evidence adduced at the trial, the District Court should have made and entered the following conclusions of law, and it erred when it refused to do so:

(a) The court has jurisdiction over the parties and of the subject matter, under the provisions of Section 70 of the Bankruptcy Act, 11 U.S.C. Chapter 7, section 110.

(b) The entire scheme of "field warehousing," as disclosed by the record, is contrary to and violative of the provisions of section 62-522 of the Arizona Code of 1939; and the lien or pledge of merchandise contemplated by such scheme is void as to general creditors of the bankrupt.

(c) The plaintiff herein, as trustee in bankruptcy of Central Auto Supply Company, represents in this action the general creditors of the bankrupt.

(d) Section 62-522 of the Arizona Code of 1939 was not repealed or modified, in whole or in part, by implication or otherwise, by the adoption of the uniform warehouse receipt act in Arizona.

(e) The defendants are not, nor is either of them, entitled to the possession of the stock of goods, wares and merchandise, in whole or in part.

(f) The plaintiff is vested with the title to said stock of goods, wares and merchandise, and the whole thereof, and the right of possession thereof, under the provisions of Section 70 of the Act of Congress Relating to Bankruptcy, as amended.

(g) Plaintiff is entitled to judgment, as prayed in his complaint.

/s/ ALLAN K. PERRY,
Attorney for Plaintiff.

[Endorsed]: Filed February 28, 1950.

[Title of District Court and Cause.]

DESIGNATION OF
CONTENTS OF RECORD ON APPEAL

The plaintiff above named hereby designates the following portions of the record to be certified and transmitted to United States Court of Appeals for the Ninth Circuit, to wit:

1. Complaint filed September 19, 1947.
2. Answer to complaint (Lawrence Warehouse Company) filed October 15, 1947.
3. Answer of defendant The Valley National Bank of Phoenix, filed October 15, 1947.
4. Plaintiff's Exhibit No. 1 in evidence (leases) admitted and filed March 17, 1949.
5. Plaintiff's Exhibit No. 2 in evidence (deposition of Harry Stack) admitted and filed March 17, 1949.
6. Plaintiff's Exhibit No. 3 in evidence (deposition of C. D. Cadot) admitted and filed March 17, 1949.
7. Plaintiff's Exhibit No. 4 in evidence (deposition of Paul S. Godber) admitted and filed March 17, 1949.
8. Plaintiff's Exhibit 5 in evidence (deposition of J. C. Baldwin) admitted and filed March 17, 1949.
9. Plaintiff's Exhibit No. 6 in evidence (deposition of E. R. Tolfree) admitted and filed March 17, 1949.
10. Plaintiff's Exhibit No. 7 in evidence (depo-

sition of F. A. Warburton) admitted and filed March 17, 1949.

11. Plaintiff's Exhibit No. 8 in evidence (deposition of M. Blackburn) admitted and filed March 17, 1949.

12. Plaintiff's Exhibit No. 9 in evidence (deposition of David Shapiro) admitted and filed March 17, 1949.

13. Plaintiff's Exhibit No. 10 in evidence (deposition of F. C. Westphal) admitted and filed March 17, 1949.

14. Defendant Lawrence Warehouse Company's Exhibit A in evidence (group of photographs) admitted and filed March 17, 1949.

15. Defendant Lawrence Warehouse Company's Exhibit E in evidence (warehouse receipts) admitted and filed March 17, 1949.

16. Defendant Lawrence Warehouse Company's Exhibit F in evidence (confirmation of delivery sheet) admitted and filed March 17, 1949.

17. All minute orders entered on or after March 17, 1949.

18. Defendant's proposed findings of fact, conclusions of law and judgment filed December 13, 1949, signed by trial judge, and refiled January 17, 1950.

19. Plaintiff's objections to findings of fact and conclusions of law proposed by defendants, filed December 16, 1949.

20. Plaintiff's motion for new trial, filed January 19, 1950.

21. Reporter's transcript filed February 24, 1950.
22. Plaintiff's notice of appeal, filed February 27, 1950.
23. Statement of points upon which plaintiff intends to rely upon his appeal filed February 28, 1950.
24. This designation.

/s/ ALLAN K. PERRY,
Attorney for Plaintiff.

[Endorsed]: Filed February 28, 1950.

In the United States District Court
for the District of Arizona

No. Civ. 1102 Phx.

RALPH BARRY as Trustee in Bankruptcy of
Central Auto Supply Company, a Corporation,
Bankrupt,
Plaintiff,

vs.

LAWRENCE WAREHOUSE COMPANY, a Cor-
poration, and THE VALLEY NATIONAL
BANK OF PHOENIX, a National Banking
Association,

Defendants.

REPORTER'S TRANSCRIPT

The above-entitled and numbered cause came on duly and regularly for hearing before the Honorable Dave W. Ling, Judge, presiding in the above-

entitled court at Phoenix, Arizona, without a jury, commencing at the hour of 10:00 o'clock, a.m., on the 17th day of March, 1949.

The plaintiff was represented by Mr. Allan K. Perry, of Messrs. Kramer, Morrison, Roche & Perry.

The defendant, Lawrence Warehouse Company, a corporation, was represented by Mr. Walter E. Craig, of Messrs. Fennemore, Craig, Allen & Bledsoe, Phoenix, Arizona, and William R. Ray, of Messrs. Williamson & Wallace, attorneys at law at San Francisco, California.

The defendant, Valley National Bank of Phoenix, was represented by John L. Gust, of Messrs. Gust, Rosenfeld, Divelbess, Robinette & Linton.

The following proceedings were had:

The Clerk: Civil 1102, Phoenix, Ralph Barry, as Trustee in Bankruptcy of Central Auto Supply Company, a corporation, bankrupt, plaintiff, versus Lawrence Warehouse Company, a corporation, and the Valley National Bank of Phoenix, a national banking association, defendants, for trial.

Mr. Perry: The plaintiff is ready, your Honor.

Mr. Craig: The defendants are ready. If the Court please, at this time I'd like to make an admission for the purpose of trying this case, Mr. William R. Ray, of Williamson & Wallace, San Francisco, a member of the California Bar, and he has been duly admitted to practice in the Ninth Circuit Court of Appeals, and in the District Courts of California.

The Court: All right, you may enter the order. You may proceed.

Mr. Perry: Mr. Kersting. [2*]

ROBERT E. KERSTING

was called as a witness on behalf of the plaintiff, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Perry:

Q. Will you state your name, please?

A. Robert E. Kersting.

Q. Where do you live?

A. At 1614 West Thomas Road, Phoenix.

Q. Are you the President of the Central Auto Supply Company, a corporation?

A. I was for a period of time immediately prior to its bankruptcy, yes.

Q. Well, the corporation is still in existence, isn't it?

A. De facto or de jure.

Q. At any event, you were President of the corporation for what period of time prior to its adjudication as a bankrupt?

A. I would say approximately seven months.

Q. And before that had you had any connection with the Central Auto Supply Company?

A. I was technically a partner, I guess, in the prior partnership before the corporation was formed.

Q. Will you just give the Court a brief history of that? Originally it was a corporation by a part-

* Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of Robert E. Kersting.)

nership consisting of J. S. Holmes and W. L. Hargrave? Is that correct?

A. That is correct.

Q. Under what name did you gentlemen do business?

A. At the time I became associated with the Company it was called the Arizona Piston Service, and maintained a small machine shop and auto parts supply house at 501 South Central. Shortly after that they adopted another name, the Central Auto Supply, at some time, and shortly thereafter incorporated and moved to a new building at 601 East Adams.

Q. Do you recall about when that was when you incorporated?

A. I believe it was the first part of '45, but I could not say exactly.

Q. And right at that time or shortly thereafter you moved to this new location?

A. Close to that period, yes.

Q. And did you maintain then the place of business at 601 to 609 East Adams Street up until the time of the adjudication in bankruptcy?

A. That is correct.

Mr. Perry: Counsel have agreed, if your Honor [4] please, that there might be introduced in evidence as Plaintiff's Exhibit, as one exhibit, a group of warehouse leases, pledge and warehousing agreement, and a plat showing the space leased by the Central Auto Supply Company to the Law-

(Testimony of Robert E. Kersting.)

rence Warehouse Company, field warehouse storage agreement, and earlier documents between the partnership and the Lawrence Warehouse Company, they might go in as one exhibit.

The Court: Very well.

Mr. Perry: That is correct?

Mr. Craig: That is correct, and I would also like, as a part of the stipulation, if it is agreeable to the Court, that the originals may be removed upon substitution of photostatic copies.

The Court: All right. They may be received.

(Thereupon the documents were received and marked as Plaintiff's Exhibit No. 1 in evidence.)

PLAINTIFF'S EXHIBIT No. 1

Lawrence Warehouse Company
Field Warehouse Lease

This Indenture, made in the City of Phoenix, County of Maricopa, and State of Arizona, this 17th day of March, 1947, by and between Central Auto Supply, Inc., a corporation, hereinafter called the lessor, and Lawrence Warehouse Company, a California corporation, hereinafter called the lessee;

Witnesseth:

Whereas, the lessor is the owner of the real estate, together with all improvements thereon, situate in

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

the City of Phoenix, County of Maricopa, and state of Arizona, described as follows; viz. 601 East Adams St., Phoenix, Arizona.

Now, Therefore, the lessor hereby rents, demises and leases, and the lessee hereby hires and takes of and from the lessor that part of the aforesaid premises described as follows, viz:

That certain storage space located in the one story brick building situated at the above address, said storage space being more particularly described as follows: fifty-four (54') feet in its greatest north and south dimension and fifty (50') feet in its greatest east and west dimension—all as shown outlined in red on plat marked Exhibit A attached hereto and made a part hereof.

with the appurtenances, together with the full right of ingress and egress to and from said premises, over and through any other premises of the lessor, to be occupied for the conduct of a field warehouse on a tenancy from month to month, and until said tenancy shall be terminated by a thirty (30) day written notice given by either party to the other, for the aggregate rental of One Dollar (\$1.00), the receipt of which is hereby acknowledged; provided, that no notice of termination by lessor shall become effective unless all warehouse receipts, or other evidence of the storage, representing commodities stored in or on said premises, or any part thereof, issued by lessee shall have been surrendered to

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

lessee and cancelled, and all charges of lessee due or to become due in connection with the operation of such warehouse shall have been fully paid.

The lessor covenants and agrees that the lessee may place on, in or adjacent to said leased premises, such signs and other evidences as it may deem necessary to indicate its possession of the leased premises and of the commodities stored therein or thereon, and further that the lessee shall have the paramount right at all times during the term of this lease to use any facilities of the lessor for receiving, handling, weighing, storing, caring for, packing, shipping and delivering any stored commodities.

It is expressly understood and agreed that the lessor shall not have access to the leased premises or to the commodities stored therein or thereon, provided, that, with the consent of the lessee, the lessor may enter the warehouse conducted on said premises and, under the supervision of the lessee, deliver thereto commodities for storage, perform such acts as are necessary in the care and preservation of the same while stored and accept delivery of commodities which are designated and released from storage by the lessee, and for the further purpose of making repairs as hereinafter provided.

The lessor agrees with the lessee that it will at its own cost and expense keep said demised premises in good order and repair, and that the lessee shall not be called upon or required to make any repairs

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

of any kind or nature to, in or about said demised premises; and said lessor hereby covenants and agrees to indemnify lessee against any claim, expense, loss or damage suffered by lessee as a result of its occupancy of the premises and against any loss or damage to commodities which may be stored in said premises by the said lessee; and said lessor holds said lessee harmless from any damage or loss that may come to any commodities stored in said premises, irrespective of the nature or cause of said damage or loss.

Charter reads Central Auto Supply, Inc., however, the seal reads Central Auto Supply.

Should the lessor violate any of the terms or conditions of this lease, or in any manner interfere with, or make difficult the duties of the agents, servants, or employees of the lessee; or become insolvent, or should the premises hereby leased become involved in any manner in litigation, or should the lessor or the lessee be ejected or ousted therefrom, or proceedings be begun for that purpose; or should the lessee at any time deem it necessary for the protection of its interests or of the commodities stored, then the lessee shall have the right to remove all commodities from the premises herein described to such other place or places as the lessee may deem proper or expedient; and in case of any such removal the lessor undertakes and agrees to pay the lessee all expenses of such removal and of

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

storing said commodities elsewhere in addition to any other proper charges against said commodities.

The lessor warrants and guarantees the peaceful possession of the premises by the lessee and agrees to indemnify and hold the lessee harmless of and from any and all claims and expenses incurred or assumed by lessee in defending or maintaining possession of said premises. The lessor agrees to execute or cause to be executed any further agreement or agreements that may be necessary to secure the convenient use and enjoyment of the premises hereby leased by the lessee.

Said lessor further agrees with said lessee to pay for all gas, electricity, light, heat, power, steam, water or other utility supplied to or used upon said demised premises during the term of this tenancy.

The lessee, without the consent of the lessor, shall not for all or any part of the term herein granted, sublet the said premises nor assign this lease.

In Witness Whereof, lessor has caused this lease to be executed by its proper corporate officers and its corporate seal to be hereunto affixed, and lessee has caused this lease to be executed by its proper corporate officers and its corporate seal to be hereunto affixed the day and year first above written.

CENTRAL AUTO SUPPLY,
INC.,

Lessor.

[Seal] By /s/ ROBERT E. KERSTING,
President.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

Attest:

C. W. SAXON,
Treas.

LAWRENCE WAREHOUSE
COMPANY,
Lessee.

[Seal] /s/ E. C. YUILLE,
Vice-President.

Attest:

/s/ F. C. HEDGER,
Assistant Secretary.

Assent—Use If Lessor Is Not Owner of
Within Described Premises

Now comes Owner of the property in the fore-
going lease, and hereby consents to the making of
said lease.

.....

(Corporation Form)

State of Arizona

County of Maricopa—ss.

I, Ronald Webster, Jr., a Notary Public in and
for said County and State, do hereby Certify that
Robert E. Kersting, personally known to me to be
the President of Central Auto Supply, Inc., and
C. W. Saxon personally known to me to be the
Treasurer of said corporation, whose names are
subscribed to the foregoing instrument, appeared

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

before me this day in person, and severally acknowledged that as such President and Treasurer they signed and delivered the said instrument as such President and Treasurer of said corporation, and caused the corporate seal of said corporation to be affixed hereto, pursuant to authority given by the Board of Directors of said corporation, as their free and voluntary act and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

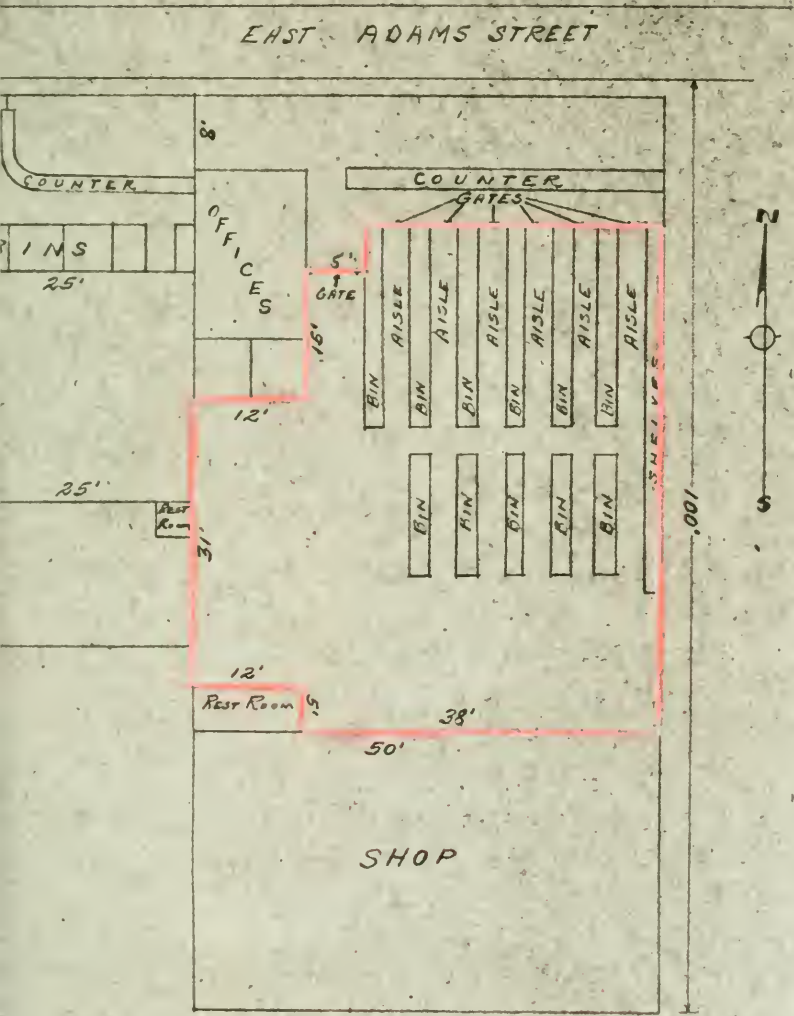
Given Under My Hand and Notarial Seal this
18th day of March, A.D. 1947.

[Seal] /s/ RONALD WEBSTER, JR.,
Notary Public.

My Commission Expires January 7, 1951.

EXHIBIT "A"
 LAWRENCE WAREHOUSE COMPANY
 PHOENIX, ARIZONA WAREHOUSE NO. 21

THE SPACE AS SHOWN OUTLINED IN RED ON THIS DIAGRAM IS
 TO LAWRENCE WAREHOUSE COMPANY, WAREHOUSEMAN, AND IS BEING
 AS PHOENIX, ARIZONA WAREHOUSE NO. 21.



(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

Lease

Modification of Pledge and
Warehousing Agreement

This Agreement, made at Los Angeles, California, this 17th day of March, 1947, by and between Central Auto Supply, Inc., a corporation organized and existing under the laws of the State of Arizona, having its principal place of business in the City of Phoenix, County of Maricopa and State of Arizona, hereinafter called the "Company"; Lawrence Warehouse Company, a corporation organized and existing under and by virtue of the laws of the State of California, hereinafter called the "Warehouseman"; and the Valley National Bank, having its principal place of business in the City of Phoenix, Arizona, hereinafter called the "Bank."

Witnesseth:

Whereas, the parties hereto entered into a certain Pledge and Warehousing Agreement dated the 17th day of March, 1947; and

Whereas, it has become necessary to change the space comprising said warehouse;

Now, Therefore, in consideration of the premises, the parties hereto covenant and agree as follows:

1. Said Pledge and Warehousing Agreement is hereby modified so that the warehouse described in

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

Exhibit "A" attached thereto shall consist of the space more particularly described in Exhibit "B" attached hereto and made a part hereof.

2. Except as herein modified the said Pledge and Warehousing Agreement is in all respects continued in full force and effect.

In Witness Whereof, the parties hereto have caused this agreement to be executed in quadruplicate by their proper corporate officers and their corporate seals to be hereunto affixed, the day and year first above written.

CENTRAL AUTO SUPPLY,
INC.

[Seal] By /s/ O. R. KERSTING.

Attest:

/s/ C. W. SAXON.

LAWRENCE WAREHOUSE
COMPANY,

[Seal] By /s/ E. C. YUILLE,
Vice President.

Attest:

/s/ F. C. HEDGER,
Asst. Secy.

VALLEY NATIONAL BANK,

[Seal] By /s/ W. MONTGOMERY,
Vice President.

Attest:

/s/ A. K. WILDMAN.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

Exhibit B

That certain storage space located in the one story brick building situated at 601 East Adams Street, Phoenix, Arizona, said storage space being more particularly described as follows: fifty-four (54') feet in its greatest north and south dimension and fifty (50') feet in its greatest east and west dimension—all as shown outlined in red on plat marked Exhibit B attached hereto and made a part hereof.

Lawrence Warehouse Company

Pledge and Warehousing Agreement

This Agreement, made in Phoenix, Arizona, this 17th day of March, 1947, by and between Central Auto Supply, Inc., a corporation organized and existing under the laws of the State of Arizona, having its principal place of business in the City of Phoenix, County of Maricopa, and State of Arizona, hereinafter called the "Company"; Lawrence Warehouse Company, a corporation organized and existing under and by virtue of the laws of the State of California, hereinafter called the "Warehouseman"; and Valley National Bank of Phoenix having its principal place of business in the City of Phoenix, Arizona, hereinafter called the "Bank."

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

Witnesseth:

Whereas, the Company is engaged in the auto parts business and is desirous of obtaining credit for the conduct of its business; and

Whereas, the Warehouseman is engaged in a general warehouse business; and

Whereas, the Bank is engaged in a general banking business and is desirous of extending credit to the Company, upon such terms and conditions, and for such time, and in such amounts, as may be required by the Company and approved by the Bank;

Now, Therefore, the parties hereto covenant and agree as follows:

1. The Company agrees to deliver to the Warehouseman to be held by it, for the account of the Bank, such delivery to be effective from and after the commencement of inventory taking as herein-after provided, all commodities listed on such inventory and located in Warehouseman's Phoenix, Arizona, Warehouse No. 21, as more particularly described in Exhibit "A" attached hereto and made a part hereof, which warehouse is, or is about to be, leased by the Warehouseman from the Company, and the Company agrees that all said commodities in said warehouse and all commodities which may thereafter be delivered into said ware-

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

house by the Company or its agents during the term of this agreement, will be delivered to the Warehouseman for the account of the Bank; and further agrees that such delivery of commodities shall constitute evidence conclusive against the Company of the delivery of said commodities to the Warehouseman for the account of the Bank, and all parties to this contract agree that such commodities immediately upon delivery into said warehouse are pledged to the Bank and become a part of the Bank's security.

2. The Company does hereby certify and guarantee that it has not delivered and will not deliver to the Warehouseman any commodities of which it was not or is not the legal owner at the time of such delivery. The Warehouseman is hereby requested and authorized to issue in the name of the Bank from time to time, a non-negotiable warehouse receipt, or receipts, for the commodities delivered to it; and the Company agrees to execute such documents as may be required in the issuance of such non-negotiable warehouse receipts.

3. The Warehouseman will accept delivery of said commodities under the following terms and conditions:

(a) The Warehouseman agrees that during the period of this agreement it will retain actual and exclusive possession of all said commodities, and will

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

not permit or suffer the Company, or any of its agents, to have possession, either actual or constructive thereof, it being understood and agreed, however, that with the consent of the Warehouseman, the Company and its employees may enter the warehouse space, and under the supervision of employees of the Warehouseman, deliver thereto commodities for storage, perform such acts as are necessary in the care and preservation of the same while stored, and accept delivery of commodities which are designated and released from storage by the Warehouseman.

(b) Delivery by the Warehouseman of any of the said commodities as hereinafter provided shall constitute a complete discharge of any liability on the part of the Warehouseman to the Company and the Bank as to such commodities delivered.

(c) The Company agrees to hold the Warehouseman harmless from any claims, demands, suits of any nature whatsoever which may be made or brought by reason of this agreement and any acts thereunder, excepting such claims as may be made by the Company against the Warehouseman by reason of its failure to exercise that degree of care in the safekeeping of said commodities which a reasonably careful man would exercise in regard to similar commodities of his own.

(d) The Company agrees to pay the Warehouseman as compensation for services hereunder the

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

fees and other charges as set forth and in the manner provided in that certain Field Warehouse Storage Agreement between Lawrence Warehouse Company and Central Auto Supply, Inc., dated July 26, 1946.

(e) It is understood and agreed between the parties hereto that the Warehouseman shall in no event be obligated to deliver any of the commodities covered by this agreement, until the Warehouseman shall have been paid in full outstanding and unpaid fees and other charges at the time of such delivery. It is further understood and agreed that any unpaid fees and other charges shall constitute a warehouseman's lien against any or all of the commodities at any time deposited and remaining in the warehouse.

(f) The Warehouseman shall be bound only by its own inventories, warehouse receipts and records.

(g) The Warehouseman agrees that it will issue a non-negotiable warehouse receipt, or receipts, to the Bank covering the commodities described on the original inventory to be prepared as hereinafter provided and will thereafter at least once each week, issue further non-negotiable warehouse receipts to the Bank covering commodities which have been delivered into said warehouse during the preceding week and not covered by a previously issued warehouse receipt.

4. The Company agrees that it will maintain dur-

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

ing the term of this agreement such insurance, if any, as is required by the Bank, and will cause all policies to contain a clause making the loss, if any, payable to the Warehouseman and to the Bank as interest may appear, and the Bank and the Warehouseman need not carry such insurance.

5. The Warehouseman agrees that it will, with all convenient and reasonable dispatch, take and prepare, in triplicate, a complete inventory of the commodities delivered to it, using thereon the description furnished to it by the Company of said commodities. The Warehouseman agrees to issue to the Bank its Non-Negotiable Warehouse Receipts for all of said commodities as shown on said inventory.

The Warehouseman agrees to keep a complete record of additional commodities delivered by the Company into the warehouse for the account of the Bank, using thereon the description furnished to it by the Company of said commodities, and at least once each week to issue to the Bank its Non-Negotiable Warehouse Receipt for all of said commodities so delivered to it. Each such Non-Negotiable Warehouse Receipt shall bear the following legend:

This Warehouse Receipt is issued to cover commodities received at the warehouse between and, both inclusive, and is subject to deliveries made from the warehouse by the Warehouseman during the same period under instructions from

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

the Warehouse Receipt holder. Documents covering commodities received and delivery orders covering commodities delivered are on file at the warehouse.

The Warehouseman agrees that it will from time to time, upon request of the Bank, take a complete inventory of all commodities in storage in said warehouse and will thereupon issue to the Bank a new Non-Negotiable Warehouse Receipt or Receipts showing the commodities on hand in lieu of all outstanding Warehouse Receipts and upon delivery thereof to and acceptance by the Bank, the Bank agrees to surrender simultaneously to the Warehouseman all then outstanding Warehouse Receipts.

The Company agrees, that on such form and in such manner as is requested by the Warehouseman, it will certify and guarantee its legal ownership of all of the commodities deposited with the Warehouseman, that the quality and quantity stated on such forms are correct and that said commodities are delivered to the Warehouseman for warehousing purposes in accordance with the terms of written agreements executed by the Company. The Warehouseman shall not be liable for any errors or inaccuracies in any description furnished by the Company.

6. The Warehouseman agrees to deliver any commodities in its possession, represented by non-negotiable warehouse receipts or held pursuant to this

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

agreement, in accordance with any Delivery Instructions in writing, or Order for Warehouse Release delivered to the Warehouseman by the Bank. It is mutually agreed that any Delivery Instructions in writing or Order for Warehouse Release received by the Warehouseman shall not give the Company any right, title or interest in or to any of the commodities stored pursuant to this agreement until the actual delivery thereof by the Warehouseman to the Company.

7. It is mutually agreed that nothing herein contained shall in any manner whatsoever be construed as a commitment on the part of the Bank to extend any credit or to make any loan or loans to the Company, the Bank expressly reserving unto itself the right to extend such credit or make such loans to the Company as in its absolute discretion it may deem advisable and to terminate such credit, as to any future loans, at any time at its option and in its sole discretion, and to proceed to the collection of any indebtedness in accordance with any collateral agreement or collateral note made by the Company to the Bank.

8. It is mutually agreed that all commodities of like description stored pursuant to this agreement may each be warehoused as one general lot of fungible goods, and that the holder of a warehouse receipt shall be entitled to such portion of each such general lot as the amount of each commodity rep-

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

resented by such receipt bears to the whole of such general lot of such commodity.

9. This agreement shall remain in full force and effect until such time as the Bank shall notify the Warehouseman, in writing, that its obligations as a warehouseman have been completely fulfilled and discharged, provided, however, that the Warehouseman shall have the right to terminate and cancel this agreement at any time upon giving thirty (30) days' written notice to the company and the Bank if the Company is in arrears in payment of charges or fees or is interfering with the operation of the warehouse above referred to. The termination or cancellation of this agreement shall not terminate or cancel said Field Warehouse Storage Agreement hereinbefore referred to, nor the liability of the Warehouseman on any Warehouse Receipts outstanding.

10. It is mutually agreed that this agreement shall be construed in accordance with the Uniform Warehouse Receipts Act of the State in which said warehouse is situate, and from and after delivery into the said warehouse, all commodities shall be governed by and be subject to the provisions of said Act.

In Witness Whereof, the parties hereto have caused this agreement to be executed in quadruplicate by their proper corporate officers and their

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

corporate seals to be hereunto affixed, the day and year first above written.

CENTRAL AUTO SUPPLY,
INC.,

[Seal] By/s/ ROBERT E. KERSTING,
President.

Attest:

/s/ W. L. Hargrove,
Secretary.

LAWRENCE WAREHOUSE
COMPANY,

[Seal] By /s/ E. C. YUILLE,
Vice-President.

Attest:

/s/ F. C. HEDGER,
Assistant Secretary.

VALLEY NATIONAL BANK
OF PHOENIX,

By /s/ [Indistinguishable.]
President.

Attest:

/s/ A. K. WILDMAN,
Asst. Cashier.

Exhibit "A"

Those certain storage spaces located in that certain brick and concrete building located at 601-609 E. Adams St., Phoenix, Maricopa County, Arizona;

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

said spaces being more particularly described as follows:

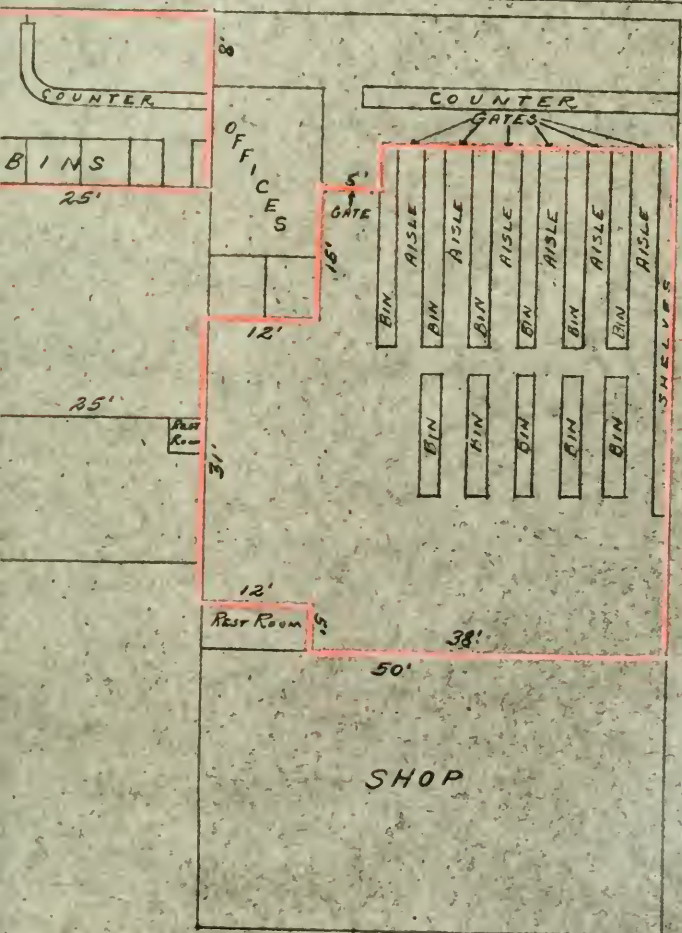
That certain storage space located in the main portion of said building said space being fifty-six (56') feet in its greatest north and south dimension and fifty (50') feet in its greatest east and west dimension, and also

That certain storage space located adjacent to and immediately west of the above-described area—this space being twenty-five (25') feet by nineteen (19') feet.

EXHIBIT "A"
LAWRENCE WAREHOUSE COMPANY
PHOENIX, ARIZONA WAREHOUSE NO. 21

OF THE SPACE AS SHOWN OUTLINED IN RED ON THIS DIAGRAM IS
ED TO LAWRENCE WAREHOUSE COMPANY, WAREHOUSEMAN, AND IS BEING
ATED AS PHOENIX, ARIZONA WAREHOUSE NO. 21.

EAST ADAMS STREET



(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

Lawrence Warehouse Company

Field Warehouse Storage Agreement

This Agreement, made and entered into at Phoenix, Arizona, this 23rd day of May, 1947, by and between Lawrence Warehouse Company, a California corporation, party of the first part, hereinafter called "Lawrence" and Central Auto Supply, Inc., a corporation, party of the second part, hereinafter called "The Depositor," in consideration of the mutual covenants and agreements hereinafter contained,

Witnesseth:

1. The depositor hereby employs Lawrence to establish and operate all field warehouses required in the depositor's business upon the following terms and conditions:

2. The depositor agrees to lease, or cause to be leased, to Lawrence, upon its form of Field Warehouse Lease, adequate warehouse storage space for all commodities to be warehoused so located and constructed as to secure the proper storing and safety of commodities to be warehoused.

3. The depositor agrees to pay to Lawrence for conducting such field warehouse or warehouses, and for storing commodities therein, the following:

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

Storage Charges:

Auto Parts and Supplies:

One-tenth of one per cent ($1/10$ of 1%) of value of commodities stored per calendar month or fraction thereof. The second party agrees to report to the first party the values of commodities for which warehouse receipts are issued.

Location Charge—Per Location:

\$250.00 per year to cover the cost of Fidelity bonds on warehouse employees, regular examinations, supplies, etc., payable upon the issuance of the first warehouse receipt or other evidence of deposit and annually thereafter.

Contract year as used herein shall be understood to run from July 26th and annual thereafter on the same day of each succeeding year during the term of this Agreement.

Premiums for insurance on commodities represented by outstanding insured warehouse receipts as provided in the "Insurance Agreement" signed by the depositor and Lawrence.

The storage charges above set forth are subject to an annual minimum payment of Two Hundred Fifty Dollars (\$250.00) payable on the date of this agreement and annually thereafter on the same day of each succeeding year during the term of this agreement. Storage charges accruing in excess of minimum payable on or before ten (10) days after date of invoice.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

The actual cost incurred by Lawrence for all employees required by Lawrence in the conduct of said warehouse or warehouses, and in the storing and handling of commodities therein, plus ten per cent (10%), payable on or before ten (10) days after date of invoice, such ten per cent (10%) to be deducted if all invoices are paid when due.

All license fees, taxes or charges levied or imposed by Federal, State, County or Municipal Governments or governmental agencies upon the operation of said warehouses, payable upon presentation of invoice.

\$100.00 for installation, preparation of documents, etc., non-recurring, payable in advance.

Regular warehouse examinations, \$. . . . annually, payable in advance.

Special examinations at cost, payable upon presentation of invoice.

All expenses including attorneys' fees incurred by Lawrence incident to conducting any warehouse under this agreement, maintaining possession of the warehouse commodities for the benefit of warehouse receipt holders and the depositor, and in connection with any litigation in which Lawrence or the depositor is a party, payable upon presentation of invoice.

4. Lawrence hereby accepts the employment on the terms hereinbefore set forth, and agrees to ex-

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

tend to the depositor the full benefit of its facilities and experience as a field warehouseman.

5. It is mutually agreed that in the event no warehouse receipts are outstanding at the beginning of or issued during any contract year, and field warehouse storage is not required during such contract year, the obligation of the depositor to pay the minimum storage charges hereinbefore provided for, shall be suspended, and thereafter the term of this agreement shall be extended one year for each year of such suspension. Contract year as used herein shall mean the twelve (12) successive months immediately following the date of this agreement, and each successive twelve (12) month period.

6. It is mutually agreed that all commodities of like description stored pursuant to this agreement may each be warehoused as one general lot of fungible goods, and that the holder of a warehouse receipt shall be entitled to such portion of each such general lot as the amount of each commodity represented by such receipt bears to the whole of such general lot of such commodity.

7. This agreement shall continue in full force and effect for three (3) years from the date hereof, and thereafter for successive three (3) year terms unless either party gives to the other written notice of intention to terminate at least ninety (90) days

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

prior to the expiration of the then current three (3) year term, provided, that no such notice of intention to terminate given by the depositor shall become effective unless all warehouse receipts, or other evidence of the storage of commodities, issued by Lawrence shall have been surrendered to Lawrence and cancelled and all charges of Lawrence shall have been paid prior to the expiration of said term, and provided further, that Lawrence shall have the right to cancel this agreement at any time upon giving thirty (30) days written notice to the depositor if the depositor is in arrears in payment of charges or is interfering with the operation of any warehouse established pursuant to this agreement.

In Witness Whereof, Lawrence has caused this agreement to be executed by its proper corporate officers and its corporate seal to be hereunto affixed, and the depositor has caused this agreement to be executed by its proper corporate officers and its corporate seal to be hereunto affixed, the day and year first above written.

LAWRENCE WAREHOUSE
COMPANY,

[Seal] By /s/ E. C. YUILLE,
Vice-President.

Attest:

/s/ C. HILDRETH,
Secretary.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

CENTRAL AUTO SUPPLY,
INC.,[Seal] By /s/ ROBERT E. KERSTING,
President.

Attest:

/s/ W. L. HARGROVE,
Secretary.

Lawrence Warehouse Company

Field Warehouse Storage Agreement

This agreement, made and entered into at Phoenix, Arizona, this 26th day of July, 1946, by and between Lawrence Warehouse Company, a California corporation, party of the first part, hereinafter called "Lawrence" and J. S. Holmes, R. E. Kersting, W. L. Hargrove d/b/a Central Auto Supply, a partnership, party of the second part, hereinafter called "The Depositor," in consideration of the mutual covenants and agreements hereinafter contained,

Witnesseth:

1. The depositor hereby employs Lawrence to establish and operate all field warehouses required in the depositor's business upon the following terms and conditions:

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

2. The depositor agrees to lease, or cause to be leased, to Lawrence, upon its form of Field Warehouse Lease, adequate warehouse storage space for all commodities to be warehoused so located and constructed as to secure the proper storing and safety of commodities to be warehoused.

3. The depositor agrees to pay to Lawrence for conducting such field warehouse or warehouses, and for storing commodities therein, the following:

Storage Charges:

Auto Parts and Supplies:

One-tenth of one percent ($1/10$ of 1%) of value of commodities stored per calendar month or fraction thereof. The second party agrees to report to the first party the values of commodities for which warehouse receipts are issued.

Location Charge—per location:

\$250.00 per year to cover the cost of Fidelity bonds on warehouse employees, regular examinations, supplies, etc., payable upon the issuance of the first warehouse receipt or other evidence of deposit and annually thereafter.

Location charge, minimum and installation charge all due and payable at the time of issuance of the issuance of the first warehouse receipt.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

[In longhand]: Cancelled by contract dated 5/23/47.

The storage charges above set forth are subject to an annual minimum payment of Two Hundred Fifty (\$250.00) Dollars payable on the date of this agreement and annually thereafter on the same day of each succeeding year during the term of this agreement. Storage charges accruing in excess of minimum payable on or before ten (10) days after date of invoice.

The actual cost incurred by Lawrence for all employees required by Lawrence in the conduct of said warehouse or warehouses, and in the storing and handling of commodities therein, plus ten percent (10%), payable on or before ten (10) days after date of invoice, such ten percent (10%) to be deducted if all invoices are paid when due.

All license fees, taxes or charges levied or imposed by Federal, State, County or Municipal Governments or governmental agencies upon the operation of said warehouses, payable upon presentation of invoice.

\$100.00 for installation, preparation of documents, etc., non-recurring, payable in advance.

Regular warehouse examinations, annually, payable in advance.

Special examinations at cost, payable upon presentation of invoice.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

All expenses including attorneys' fees incurred by Lawrence incident to conducting any warehouse under this agreement, maintaining possession of the warehoused commodities for the benefit of warehouse receipt holders and the depositor, and in connection with any litigation in which Lawrence or the depositor is a party, payable upon presentation of invoice.

4. Lawrence hereby accepts the employment on the terms hereinbefore set forth, and agrees to extend to the depositor the full benefit of its facilities and experience as a field warehouseman.

5. It is mutually agreed that in the event no warehouse receipts are outstanding at the beginning of or issued during any contract year, and field warehouse storage is not required during such contract year, the obligation of the depositor to pay the minimum storage charges hereinbefore provided for, shall be suspended, and thereafter the term of this agreement shall be extended one year for each year of such suspension. Contract year as used herein shall mean the twelve (12) successive months immediately following the date of this agreement, and each successive twelve (12) month period.

6. It is mutually agreed that all commodities of like description stored pursuant to this agreement, may each be warehoused as one general lot of fungible goods, and that the holder of a warehouse

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

receipt shall be entitled to such portion of each such general lot as the amount of each commodity represented by such receipt bears to the whole of such general lot of such commodity.

7. This agreement shall continue in full force and effect for three (3) years from the date hereof, and thereafter for successive three (3) year terms unless either party gives to the other written notice of intention to terminate at least ninety (90) days prior to the expiration of the then current three (3) year term, provided, that no such notice of intention to terminate given by the depositor shall become effective unless all warehouse receipts, or other evidence of the storage of commodities, issued by Lawrence shall have been surrendered to Lawrence and cancelled and all charges of Lawrence shall have been paid prior to the expiration of said term, and provided further, that Lawrence shall have the right to cancel this agreement at any time upon giving thirty (30) days written notice to the depositor if the depositor is in arrears in payment of charges or is interfering with the operation of any warehouse established pursuant to this agreement.

In Witness Whereof, Lawrence has caused this agreement to be executed by its proper corporate officers and its corporate seal to be hereunto affixed, and the depositor has caused this instrument to be

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

executed by a partner thereunto duly authorized, the day and year first above written.

LAWRENCE WAREHOUSE
COMPANY,

[Seal] By /s/ E. C. YUILLE,
Vice-President.

Attest:

/s/ C. HILDRETH,
Secretary.

J. S. HOLMES,
R. E. KERSTING and
W. L. HARGROVE,

Doing Business Under the
Trade Name and Style of

CENTRAL AUTO SUPPLY,

By /s/ ROBERT E. KERSTING,
Partner.

Attest:

By /s/ W. L. HARGROVE,
Partner.

By /s/ J. S. HOLMES,
Partner.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

Lawrence Warehouse Company
Pledge and Warehousing Agreement

[In longhand]: Cancelled by P/W/A dated 3/17/47.

This Agreement, made in Phoenix, Arizona, this 30 day of July, 1946, by and between J. S. Holmes, R. E. Kersting and W. L. Hargrove, a partnership, d/b/a Central Auto Supply organized and existing under the laws of the State of Arizona, having its principal place of business in the City of Phoenix, County of Maricopa, and State of Arizona, hereinafter called the "Company"; Lawrence Warehouse Company, a corporation organized and existing under and by virtue of the laws of the State of California, hereinafter called the "Warehouseman"; and Valley National Bank, having its principal place of business in the City of Phoenix, Arizona, hereinafter called the "Bank."

Witnesseth:

Whereas, the Company is engaged in the auto parts and supply business and is desirous of obtaining credit for the conduct of its business; and

Whereas, the Warehouseman is engaged in a general warehouse business; and

Whereas, the Bank is engaged in a general banking business and is desirous of extending credit to

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

the Company, upon such terms and conditions, and for such time, and in such amounts, as may be required by the Company and approved by the Bank;

Now, Therefore, the parties hereto covenant and agree as follows:

1. The Company agrees to deliver to the Warehouseman to be held by it, for the account of the Bank, such delivery to be effective from and after the commencement of inventory taking as hereinafter provided, all commodities listed on such inventory and located in Warehouseman's Phoenix, Arizona, Warehouse No. 21, as more particularly described in Exhibit "A" attached hereto and made a part hereof, which warehouse is, or is about to be, leased by the Warehouseman from the Company, and the Company agrees that all said commodities in said warehouse and all commodities which may thereafter be delivered into said warehouse by the Company or its agents during the term of this agreement, will be delivered to the Warehouseman for the account of the Bank; and further agrees that such delivery of commodities shall constitute evidence conclusive against the Company of the delivery of said commodities to the Warehouseman for the account of the Bank, and all parties to this contract agree that such commodities immediately upon delivery into said warehouse are pledged to the Bank and become a part of the Bank's security.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

2. The Company does hereby certify and guarantee that it has not delivered and will not deliver to the Warehouseman any commodities of which it was not or is not the legal owner at the time of such delivery. The Warehouseman is hereby requested and authorized to issue in the name of the Bank from time to time, a non-negotiable warehouse receipt, or receipts, for the commodities delivered to it; and the Company agrees to execute such documents as may be required in the issuance of such non-negotiable warehouse receipts.

3. The Warehouseman will accept delivery of said commodities under the following terms and conditions:

(a) The Warehouseman agrees that during the period of this agreement it will retain actual and exclusive possession of all said commodities, and will not permit or suffer the Company, or any of its agents, to have possession, either actual or constructive thereof, it being understood and agreed, however, that with the consent of the Warehouseman, the Company and its employees may enter the warehouse space, and under the supervision of employees of the Warehouseman, deliver thereto commodities for storage, perform such acts as are necessary in the care and preservation of the same while stored, and accept delivery of commodities which are designated and released from storage by the Warehouseman.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

(b) Delivery by the Warehouseman of any of the said commodities as hereinafter provided shall constitute a complete discharge of any liability on the part of the Warehouseman to the Company and the Bank as to such commodities delivered.

(c) The Company agrees to hold the Warehouseman harmless from any claims, demands, suits of any nature whatsoever which may be made or brought by reason of this agreement and any acts thereunder, excepting such claims as may be made by the Company against the Warehouseman by reason of its failure to exercise that degree of care in the safekeeping of said commodities which a reasonably careful man would exercise in regard to similar commodities of his own.

(d) The Company agrees to pay the Warehouseman as compensation for services hereunder the fees and other charges as set forth and in the manner provided in that certain Field Warehouse Storage Agreement between Lawrence Warehouse Company and Central Auto Supply, dated July 26, 1946.

(e) It is understood and agreed between the parties hereto that the Warehouseman shall in no event be obligated to deliver any of the commodities covered by this agreement, until the Warehouseman shall have been paid in full outstanding and unpaid fees and other charges at the time of such delivery. It is further understood and agreed that

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

any unpaid fees and other charges shall constitute a warehouseman's lien against any or all of the commodities at any time deposited and remaining in the warehouse.

(f) The Warehouseman shall be bound only by its own inventories, warehouse receipts and records.

(g) The Warehouseman agrees that it will issue a non-negotiable warehouse receipt, or receipts, to the Bank covering the commodities described on the original inventory to be prepared as hereinafter provided and will thereafter at least once each week, issue further non-negotiable warehouse receipts to the Bank covering commodities which have been delivered into said warehouse during the preceding week and not covered by a previously issued warehouse receipt.

4. The Company agrees that it will maintain during the term of this agreement such insurance, if any, as is required by the Bank, and will cause all policies to contain a clause making the loss, if any, payable to the Warehouseman and to the Bank as interest may appear, and the Bank and the Warehouseman need not carry such insurance.

5. The Warehouseman agrees that it will, with all convenient and reasonable dispatch, take and prepare, in triplicate, a complete inventory of the commodities delivered to it, using thereon the description furnished to it by the Company of said commodities. The Warehouseman agrees to issue

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

to the Bank its Non-Negotiable Warehouse Receipts for all of said commodities as shown on said inventory.

The Warehouseman agrees to keep a complete record of additional commodities delivered by the Company into the warehouse for the account of the Bank, using thereon the description furnished to it by the Company of said commodities, and at least once each week to issue to the Bank its Non-Negotiable Warehouse Receipt for all of said commodities so delivered to it. Each such Non-Negotiable Warehouse Receipt shall bear the following legend:

This Warehouse Receipt is issued to cover commodities received at the warehouse between and, both inclusive, and is subject to deliveries made from the warehouse by the Warehouseman during the same period under instructions from the Warehouse Receipt holder. Documents covering commodities received and delivery orders covering commodities delivered are on file at the warehouse.

The Warehouseman agrees that it will from time to time, upon request of the Bank, take a complete inventory of all commodities in storage in said warehouse and will thereupon issue to the Bank a new Non-Negotiable Warehouse Receipt or Receipts showing the commodities on hand in lieu of all outstanding Warehouse Receipts and upon delivery thereof to and acceptance by the Bank, the Bank

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

agrees to surrender simultaneously to the Warehouseman all then outstanding Warehouse Receipts.

The Company agrees, that on such form and in such manner as is requested by the Warehouseman, it will certify and guarantee its legal ownership of all of the commodities deposited with the Warehouseman, that the quality and quantity stated on such forms are correct and that said commodities are delivered to the Warehouseman for warehousing purposes in accordance with the terms of written agreements executed by the Company. The Warehouseman shall not be liable for any errors or inaccuracies in any description furnished by the Company.

6. The Warehouseman agrees to deliver any commodities in its possession, represented by non-negotiable warehouse receipts or held pursuant to this agreement, in accordance with any Delivery Instructions in writing, or Order for Warehouse Release delivered to the Warehouseman by the Bank. It is mutually agreed that any Delivery Instructions in writing or Order for Warehouse Release received by the Warehouseman shall not give the Company any right, title or interest in or to any of the commodities stored pursuant to this agreement until the actual delivery thereof by the Warehouseman to the Company.

7. It is mutually agreed that nothing herein contained shall in any manner whatsoever be construed

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

as a commitment on the part of the Bank to extend any credit or to make any loan or loans to the Company, the Bank expressly reserving unto itself the right to extend such credit or make such loans to the Company as in its absolute discretion it may deem advisable and to terminate such credit, as to any future loans, at any time at its option and in its sole discretion, and to proceed to the collection of any indebtedness in accordance with any collateral agreement or collateral note made by the Company to the Bank.

8. It is mutually agreed that all commodities of like description stored pursuant to this agreement may each be warehoused as one general lot of fungible goods, and that the holder of a warehouse receipt shall be entitled to such portion of each such general lot as the amount of each commodity represented by such receipt bears to the whole of such general lot of such commodity.

9. This agreement shall remain in full force and effect until such time as the Bank shall notify the Warehouseman, in writing, that its obligations as a warehouseman have been completely fulfilled and discharged, provided, however, that the Warehouseman shall have the right to terminate and cancel this agreement at any time upon giving thirty (30) days' written notice to the Company and the Bank if the Company is in arrears in payment of charges or fees or is interfering with the operation of the

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

warehouse above referred to. The termination or cancellation of this agreement shall not terminate or cancel said Field Warehouse Storage Agreement hereinbefore referred to, nor the liability of the Warehouseman on any Warehouse Receipts outstanding.

10. It is mutually agreed that this agreement shall be construed in accordance with the Uniform Warehouse Receipts Act of the State in which said warehouse is situate, and from and after delivery into the said warehouse, all commodities shall be governed by and be subject to the provisions of said Act.

In Witness Whereof, the parties hereto have caused this agreement to be executed in quadruplicate by their proper corporate officers and their corporate seals to be hereunto affixed, the day and year first above written.

J. S. HOLMES,
R. E. KERSTING and
W. L. HARGROVE d/b/a
CENTRAL AUTO SUPPLY.

[Seal] By /s/ R. E. KERSTING,
Partner.

Attest:

/s/ J. S. HOLMES,
Partner.

/s/ W. L. HARGROVE,
Partner.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

LAWRENCE WAREHOUSE
COMPANY.

[Seal] By /s/ E. C. YUILLE,
Vice-President.

Attest: .

F. C. HEDGER,
Assistant Secretary.

VALLEY NATIONAL BANK.

By /s/ P. W. FETCHÉR,
Vice-President.

Attest:

/s/ A. K. WILDMAN,
Assistant Cashier.

Lawrence Warehouse Company
Field Warehouse Lease

This Indenture, made in the City of Phoenix, County of Maricopa, and State of Arizona, this 30th day of July, 1946, by and between J. S. Holmes, R. E. Kersting and W. L. Hargrove a partnership doing business under the trade name and style of Central Auto Supply, a partnership, hereinafter called the lessor, and Lawrence Warehouse Company, a California corporation, hereinafter called the lessee;

Witnesseth:

Whereas, the lessor is the owner of the real

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

estate, together with all improvements thereon, situate in the City of Phoenix, County of Maricopa, and State of Arizona, described as follows: viz: That certain brick and concrete building located at 601-609 E. Adams St., Phoenix, Maricopa County, Arizona.

[In longhand]: Cancelled by lease dated 3/17/47.

Now, Therefore, the lessor hereby rents, demises and leases, and the lessee hereby hires and takes of and from the lessor that part of the aforesaid premises described as follows, viz:

Those certain storage spaces located in the above-described building; said spaces being more particularly described as follows: That certain storage space located in the main portion of said building—said space being fifty six (56') feet in its greatest north and south dimension and fifty (50') feet in its greatest east and west dimension, and also

That certain storage space located adjacent to and immediately west of the above-described area—this space being twenty-five (25') feet by nineteen (19') feet.

The above-described spaces as shown outlined in red on plat marked "Exhibit A" attached hereto and made a part hereof.

with the appurtenances, together with the full right of ingress and egress to and from said premises,

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

over and through any other premises of the lessor, to be occupied for the conduct of a field warehouse on a tenancy from month to month, and until said tenancy shall be terminated by a thirty (30) day written notice given by either party to the other, for the aggregate rental of One Dollar (\$1.00), the receipt of which is hereby acknowledged; provided, that no notice of termination by lessor shall become effective unless all warehouse receipts, or other evidence of the storage, representing commodities stored in or on said premises, or any part thereof, issued by lessee shall have been surrendered to lessee and cancelled, and all charges of lessee due or to become due in connection with the operation of such warehouse shall have been fully paid.

The lessor covenants and agrees that the lessee may place on, in or adjacent to said leased premises, such signs and other evidences as it may deem necessary to indicate its possession of the leased premises and of the commodities stored therein or thereon, and further that the lessee shall have the paramount right at all times during the term of this lease to use any facilities of the lessor for receiving, handling, weighing, storing, caring for, packing, shipping and delivering any stored commodities.

It is expressly understood and agreed that the lessor shall not have access to the leased premises or to the commodities stored therein or thereon, provided, that, with the consent of the lessee, the lessor may enter the warehouse conducted on said

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

premises and, under the supervision of the lessee, deliver thereto commodities for storage, perform such acts as are necessary in the care and preservation of the same while stored and accept delivery of commodities which are designated and released from storage by the lessee, and for the further purpose of making repairs as hereinafter provided.

The lessor agrees with the lessee that it will at its own cost and expense keep said demised premises in good order and repair, and that the lessee shall not be called upon or required to make any repairs of any kind or nature to, in or about said demised premises; and said lessor hereby covenants and agrees to indemnify lessee against any claim, expense, loss or damage suffered by lessee as a result of its occupancy of the premises and against any loss or damage to commodities which may be stored in said premises by the said lessee; and said lessor holds said lessee harmless from any damage or loss that may come to any commodities stored in said premises, irrespective of the nature or cause of said damage or loss.

Should the lessor violate any of the terms or conditions of this lease, or in any manner interfere with, or make difficult the duties of the agents, servants, or employees of the lessee; or become insolvent, or should the premises hereby leased become involved in any manner in litigation, or should the lessor or the lessee be ejected or ousted therefrom,

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

or proceedings be begun for that purpose; or should the lessee at any time deem it necessary for the protection of its interests or of the commodities stored, then the lessee shall have the right to remove all commodities from the premises herein described to such other place or places as the lessee may deem proper or expedient; and in case of any such removal the lessor undertakes and agrees to pay the lessee all expenses of such removal and of storing said commodities elsewhere in addition to any other proper charges against said commodities.

The lessor warrants and guarantees the peaceful possession of the premises by the lessee and agrees to indemnify and hold the lessee harmless of and from any and all claims and expenses incurred or assumed by lessee in defending or maintaining possession of said premises. The lessor agrees to execute or cause to be executed any further agreement or agreements that may be necessary to secure the convenient use and enjoyment of the premises hereby leased by the lessee.

Said lessor further agrees with said lessee to pay for all gas, electricity, light, heat, power, steam, water or other utility supplied to or used upon said demised premises during the term of this tenancy.

The lessee, without the consent of the lessor, shall not for all or any part of the term herein granted, sublet the said premises nor assign this lease.

In Witness Whereof, lessor has caused this in-

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

strument to be executed by a partner thereunto duly authorized, and lessee has caused this lease to be executed by its proper corporate officers and its corporate seal to be hereunto affixed the day and year first above written.

J. S. HOLMES,
R. E. KERSTING and
W. L. HARGROVE, d/b/a
CENTRAL AUTO SUPPLY,
Lessor.

[Seal] By /s/ R. E. KERSTING,
Partner.

Attest:

/s/ J. S. HOLMES,
Partner.

By /s/ W. L. HARGROVE,
Partner.

LAWRENCE WAREHOUSE
COMPANY,
Lessee.

[Seal] By /s/ E. C. YUILLE,
Vice-President.

Attest:

/s/ F. C. HEDGER,
Assistant Secretary.

(Testimony of Robert E. Kersting.)

Plaintiff's Exhibit No. 1—(Continued)

Assent—Use If Lessor Is Not Owner
Of Within Described Premises

Now comes owner of the property described in the foregoing lease, and hereby consents to the making of said lease.

.....
.....

(Individual or Partnership Form)

State of Arizona,
County of Maricopa—ss.

I, Polly Smith, a Notary Public in and for said County and State aforesaid, do hereby Certify that R. E. Kersting, J. S. Holmes and W. L. Hargrove personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act and deed for the uses and purposes therein set forth.

Given Under My Hand and Notarial Seal this 30th day of July, A.D. 1946.

[Seal] /s/ POLLY SMITH,
Notary Public.

My Commission Expires 6-18-48.

Admitted and Filed March 17, 1949.

[Endorsed]: Filed March 30, 1950.

(Testimony of Robert E. Kersting.)

Q. (By Mr. Perry): Mr. Kersting, I show you Plaintiff's Exhibit No. 1 in evidence. I will ask you if you are familiar with those documents?

A. Yes, sir.

Q. And I will ask you if the top document there that is marked "Lawrence Warehouse Company, field warehouse lease," was the document that was in effect at the time of the adjudication of bankruptcy? [5]

A. Well, I believe it was in effect, or a similar document, and as I read it over, I see it is dated March 17th, 1947, and signed by myself, so it must have been the one that was in effect.

Q. And the pledge immediately under that, does that correctly delineate by red lines the portion of the property covered by the lease to which you have just referred?

A. I believe that is correct.

Q. Now, after the execution of this field warehouse release or field warehouse lease, your Company, the Central Auto Supply Company, continued to operate the business, is that right?

A. That is correct.

Q. And what was your business?

A. The sale of auto accessories and the operation of a machine shop, automotive machine shop.

Q. And after the execution of this lease, you just tell the Court how the business was operated with reference to what your Company did, and what the Lawrence Warehouse Company did, so

(Testimony of Robert E. Kersting.)

we will have a picture of how the operations were conducted.

A. Well, just a small prologue, and not to take up the time of the Court or anything, but we were in certain financial difficulties due, mainly, to the strike of our major suppliers, the Seal [6] Power Corporation. This Company was responsible for a little over 50 per cent of the volume of our sales. They went on strike and remained on strike for eight months. We took no deliveries, and that explains our financial stress, and we went first, I believe, to the Valley National Bank in the hopes of getting some type or some form of financing that would help carry us through this strike period, for, of course, we had no idea it would last for seven or eight months, we hoped it would be over in two or three weeks. I don't know exactly how it came about, but at least in cooperation with the Valley Bank and the Lawrence Warehouse Company, a Lawrence field warehouse application was necessitated, which you have just introduced in evidence here. My understanding of that operation was roughly this: I don't claim to be an authority on the technical parts of it, but we had certain inventories, certain merchandise in the shop at the time. In order to increase our volume we wanted to increase our inventory to more adequately compete with the other plants in the area here. The bank and the Lawrence Warehouse showed us that if they could control a certain por-

(Testimony of Robert E. Kersting.)

tion of our building, a certain portion of our inventory; that is, the portion of the building [7] which would contain our inventory, and through some operation of some type of warehouse receipt, if we would pledge that inventory that was already there and then also the new inventory as it came in, that is, as it was purchased from our distributors, and if we allowed them to keep complete control of that inventory as to what came in and what went out, the Valley Bank then would lend us a certain sum of money, a certain percentage on the cost value of that inventory as against these warehouse receipts or whatever they were, whatever we wanted to technically call them. The percentage of the loan from the Valley Bank, I believe, ran somewhere between 50 and 60 per cent. It varied up and down for a time, and we, of course, the unfortunate part of it was, we never knew what it was going to be. The next morning it would be cut down to 10 per cent, and we could be out of business by having to immediately pay the Bank that amount. As our inventory came in and came in higher, of course we were entitled, technically, to more money, more of a loan on that pledged inventory to the Bank. As I understood it, the warehouse system was merely the middle man to control and check on that inventory and see what happened to it, supposedly, and the Bank, in turn [8] loaned us money on what was pledged.

Q. Now, the portion of your warehouse or store room, or whatever it was that was leased to the

(Testimony of Robert E. Kersting.)

Lawrence Warehouse Company as shown in the red lines on the pledge I showed you a few moments ago, how was that separated from the balance of the building?

A. Either by walls or built over wire gauging similar to chicken wire, and at the close of business each day it was more or less self contained in this chicken wire, in some cases by folding doors which could be folded shut and then locked with a padlock.

Q. Now, was there any portion of your stock of merchandise that was offered for sale that was not contained within this area that was enclosed by chicken wire or walls or the area that is shown on the plat in red?

A. Yes. For a time there was a small portion of it in a smaller building next to the main building known as the carburetor and electrical shop. There was a certain inventory kept in there that was not in the warehouse system, and also there was our larger machine shop in the rear which was not contained in the warehouse, and there were certain parts out there at all times, of course, of considerable value.

Q. In percentage, would you say that the greater portion of your stock was within this enclosure that you mentioned?

A. I'd say at least 90 per cent, possibly more than that.

Q. At all times? A. At all times.

Q. Now, will you just tell the Court, assuming

(Testimony of Robert E. Kersting.)

that a purchaser came in to buy an item while this arrangement was in effect, what the operations were that resulted in the sale and delivery to him of whatever he wanted to purchase?

A. If a purchaser came in the front door, you mean, in person?

Q. Yes.

A. In this case? Well, he would walk up to the counter and he would ask for gasket for a Model A Ford, which we never had, and the man at the counter would go back to the stock and withdraw that gasket for a Model A Ford and bring it out to him and ask him whether it was charge or cash. If it was cash, he would pay his \$2.28 in cash and get a ticket. On the ticket, which would be a Central Auto Supply invoice, it would show "One Gasket, \$2.28, paid." [10]

Q. This is a cash sale?

A. This is a cash sale, yes. The counter man would take the money and give it to the Cashier and she would ring it up as cash. If it were a credit sale the same thing would happen except the money would not be transferred, would be written up on the invoice as a charge to a certain company, and the customers would sign for the charge. Now, that was the outside part of it. Now, you want—

Q. Go right ahead.

A. The inside part?

Q. Yes.

A. Then, operating under the Lawrence System,

(Testimony of Robert E. Kersting.)

and again, now, I am just speaking from the association I had there from what I saw and what I know. Now, there might be some technical parts I am not right on or don't know about, because it was a little complicated, I will grant you that. As I understood it, that counter man would then take his tickets, take the tickets, whether they were charge or cash tickets, and I means by "tickets," the invoices here, and give them to our office girl, and she would process them during that day or at the end of the day, or during the next day. We usually were two or three days behind with them as any business is, and in processing them she [11] would by some kind of a list or recording method, would note the number of units that were allowed, the units being, just for instance, a gasket, as I said, would be one unit, or a box of tools might be another unit, some type of unit designation, and would cost the tickets. Now, whether the office girl did this costing or whether the order desk man or a Lawrence employee did it, I am not too clear on that, but somebody at least in the organization did cost them, arrive at our cost figure from catalogues, and so on.

Q. Who handled the money, assuming I went in there and bought a gasket for \$2.28, what became of that \$2.28?

A. The cashier would handle the money and put it in the cash register.

Q. Well, would that be the Central Auto Sup-

(Testimony of Robert E. Kersting.)

ply or the Lawrence Warehouse, is what I am trying to get at?

A. It would be the Central Auto Supply.

Q. Then what became of that money?

A. Well, the money was deposited in the bank account of the Central Auto Supply, or in some cases was used for paid-outs, small cash paid-outs, but it was used as any normal business would use the money. [12]

Q. Do you know whether the Lawrence Warehouse employees had anything at all to do with the money that came in?

A. Well, yes, in certain instances they would receive the money. In other words, generally the counter man, the head counter man, would be, at least, the Lawrence Warehouse employee. He would take the money of the cash sale from the customer and then give it to our cashier through a little cage.

Q. And your cashier saw that it went into the bank to your account?

A. That is correct.

Q. And you had it for any expenses that you had in the business, the expenses or the payment of the indebtedness to the Valley Bank or anything else?

A. Any place it could be used, yes, that is correct.

Q. I wish you would give the Court one more illustration, Mr. Kersting. Supposing you were buying from a distributor on an open account and

(Testimony of Robert E. Kersting.)

the distributor shipped goods to you on an open account, how, then, were those goods handled? In other words, what I am trying to get at is, did that go into the Lawrence Warehouse inventory [13] and warehouse receipts issued against them?

A. That is correct, yes, they were handled like any—I mean, whether we paid cash for goods that came in or whether they came in on credit, they still went right into the Lawrence Warehouse system.

Q. In other words, if a distributor sold you goods on credit, then am I correct, that as soon as those goods arrived and before they had been paid for by you, they were placed in this inventory and the Lawrence Warehouse Company issued its warehouse receipt to the Valley Bank for that?

A. Well, the first part of your question, yes, they were immediately put in the inventory and we, within due course of processing, as rapidly as possible reported them as entering the inventory, and then they were used, yes, as a credit, or sooner or later placed on some type of warehouse receipt.

Q. Regardless of whether they had been paid for in cash or whether you had them on credit?

A. That is right.

Q. Now, was there any check in the amount, or was there any limit on the amount of merchandise that you could sell in any one day or in any one week, or anything of that sort? [14]

A. Toward the middle of this system, and from

(Testimony of Robert E. Kersting.)

then on there were limits placed on the amount we could sell, that is the amount we could sell on open account. I believe, as I understood it, that at any time we could sell anything we wanted to, I mean, we could sell our whole inventory if we could pay for it right away and if we could pay the Bank off the amount that we owed them.

Q. In other words, if a purchaser went in with the cash he could have bought the entire inventory from you?

A. Well, now, toward the end, now, of course, things were getting pretty stormy, and everyone was running around with padlocks and everything else, but I know there was a period in there, I know, for instance, that we could have called the Bank and said, "Now, we can sell all of this for 45,000 here tomorrow morning," and they would not only have said, "All right," they would have helped us, I know that.

Q. Now, this money you borrowed from the Bank on the security of these warehouse receipts, you made some payment on that, did you, from time to time?

A. Would you say that again?

Q. Now, what I am trying to get at is this: [15] You borrowed money from the Valley Bank and warehouse receipts were issued against this stock to the Valley Bank. Now, did you, from time to time, make payments on that indebtedness to the Valley Bank?

A. I believe that there was some repayments in

(Testimony of Robert E. Kersting.)

there. They would not have been very much, very many, but I believe there were some renegotiations or repayments of parts to them. Again, I cannot say for sure, but as I think a little more on that last question, I am pretty sure now I can say there were several payments that we made by check as an adjustment on this over control of our limits in there. I am sure the records might show some checks paid against that. At least, that is my remembrance now.

Mr. Perry: You may cross-examine.

Cross-Examination

By Mr. Craig:

Q. Mr. Kersting, you weren't actively participating in this operation, were you, in the sense—of course, you were interested in seeing that the business made a success, but you weren't actually spending all your time up there worrying about the operation, the physical operation of that business, were you?

A. Not until the last few months. I'd say the last few months I spent about, maybe, 75 per cent of my time there.

Q. Yes, would you say about the last three or four months of the operation?

A. That is about correct.

Q. And at that time you were trying to salvage what you had in the business and see if you could not either make it go or wind it up, is that correct?

(Testimony of Robert E. Kersting.)

A. That is correct. I represented about \$55,000 worth of investment in there by myself and other stockholders, other people who had put money in there, and I was trying to see if we could recoup a part of it, which we didn't.

Q. But prior to that period in which you were in serious financial stress, I mean, when the business was in serious financial stress, you didn't actively go out there and supervise these counter men, or anybody else particularly, did you?

A. Well, now, to honestly answer that question, I didn't spend all of my time there, no. I had spent, I imagine, during the early part of the Company's existence, the six or seven months prior—the last three months maybe I spent 20 or 25 per cent of my time there, but I'd go there and visit [17] the Company at least once a day.

Q. To see how they were getting along?

A. To see how they were getting along and then also to direct the policy of the men who supposedly were carrying this thing out.

Q. At the time this plan of financing was introduced originally, other than assisting to set up that financing plan, you had no particular active participation in the business, did you?

A. You said prior to this plan for financing?

Q. At the time the plan was originally introduced during the life of the copartnership? As I understand you, Mr. Kersting, you established this business or became interested in this business when

(Testimony of Robert E. Kersting.)

it was the Piston Service down on South Central Avenue? A. That is right, yes.

Q. And at that time it was a copartnership?

A. That is right.

Q. And it was about that time that you changed the name to the Central Auto Supply, and it was still a copartnership, so the strike came along and you set up this financing plan with the Valley Bank and the Lawrence Warehouse Company?

A. Yes.

Q. Then shortly thereafter you moved over to your new location?

A. That is correct.

Q. Now, other than to assist your copartners and others interested in this business in getting these instruments properly executed and getting the thing set up in a proper manner, you weren't then actively supervising the business other than occasionally going down to see how it was getting along, and, of course, interested in your investment?

A. Well, I don't think that would be the fair statement, Mr. Craig. I'd say largely before that time I became pretty interested in its operations because of the stockholders that I represented in there, and I took these steps—I flew back to Muskegon, Michigan, to our distributor there, and spent about four days there explaining the Lawrence System to them, explaining what we were doing, and hoping we could work out something with them. I spent many, many long hours in the

(Testimony of Robert E. Kersting.)

Valley Bank there trying to borrow thirty and getting five, I mean, the typical bank operation, and spent an awful lot of time during that six or eight months in there.

Q. Yes, but, Mr. Kersting, maybe you didn't understand what I am getting at. Those activities which you have just related were necessary to the placing in operation of this financing plan, weren't they? You were vitally interested in that and you did a lot of work in that respect?

A. That is right.

Q. But at the same time you weren't actively going down there and pulling gaskets off the shelf and various things, and selling them over the counter, or telling somebody else to sell them over the counter, or anything of that nature, did you?

A. To this extent, that along with these operations here, and I am not trying to extend this, but I want to get at what I know, I mean trying to tell everything I know factually. We instituted a George S. May Company survey a little prior to this operation here, which is a business engineering firm. I mean their intent is to show you how to operate your business efficiently and make money, and I did spend a lot of time with the people that ran that survey, and got to know quite a bit of the technical problems in the business. To answer your question thoroughly, the second part of it, I didn't go and pull gaskets off the wall or sell parts down there. I have done it, but I mean it was not the general practice. [20]

(Testimony of Robert E. Kersting.)

Q. Now, as I understand your testimony, Mr. Kersting, this merchandise that was pledged to the Valley National Bank as security for their loan was fenced off and kept separate from the other property in your business, is that correct?

A. Yes, that is a correct statement.

Q. And the custody of that merchandise was, so long as it was in that area, was in the Lawrence Warehouse Company?

Mr. Perry: Just a moment, if the Court please, I object to that as calling for a conclusion of the witness.

The Court: Probably so.

Mr. Perry: That is a matter for the Court to determine.

Mr. Craig: The physical custody of the property, Mr. Kersting, to your knowledge, was in behind these fences of the Lawrence Warehouse Company, is that correct?

A. What do you mean by "custody"?

Q. Well, where the goods were finally placed.

A. Placed, yes, they were behind Lawrence Warehouse gates.

Mr. Craig: I wonder, to save time, if we could have all of these photographs marked as one exhibit?

Mr. Perry: Sure. [21]

(Thereupon the documents were marked as Defendants' Exhibit—Lawrence Warehouse Exhibits A and B for identification.)

(Testimony of Robert E. Kersting.)

Mr. Craig: Now, Mr. Kersting, I show you a set of photographs marked Lawrence Warehouse Exhibit A for identification, and I will ask you if those photographs truly represent your place of business during this period, and trying represent the manner of posting the signs and notices on the premises? A. Yes, I believe they do.

Q. Now, Mr. Kersting, in the course of your operations did you prepare or have prepared, or did your Company prepare a pamphlet that you showed to these supply houses that you were purchasing commodities from or others interested in your operations?

A. A pamphlet relating to what?

Q. Well, your business operation and what you were doing, the proposed method of financing, possibly, and what activities you were engaged in.

A. I recall planning one, but I don't recall it. I recall working on something like that. A part of it was in connection with the May Company's survey and recommendation. We also always wanted some type of operational capital. I can't pin [22] right down what you are referring to, or remember it exactly though.

Q. Well, I will show you—(handing a document to the witness).

A. Oh, yes. Now, when you say "pamphlet" we did prepare and create a loose leaf photograph to accomplish the job of explaining in more or less catalogue form. Yes, I am very familiar with that.

(Testimony of Robert E. Kersting.)

I was thinking of something printed and could not recall what you were referring to.

Q. I refer now to Defendant Lawrence Warehouse Company's Exhibit No. B for identification and ask you if that is a portion of that loose leaf album that you referred to, and whether it truly depicts the front of your store building on East Adams Street and also the inside of the store building, the front counter?

A. Yes, I believe that is one of the loose leaves from it. I think in fairness I ought to say that this was one of the last things that was prepared or was done in the Company. I mean it was very much toward the end.

Q. Toward the end of your operations?

A. That is right, yes, sir.

Q. Now, Mr. Kersting, when you entered into this financial arrangement with the Valley National Bank and the Lawrence Warehouse Company, your business—your corporation or copartnership actually received the money from the Valley National Bank, did it not? You got a loan from the Valley National Bank? A. That is right, yes.

Q. Your business received the money from the Bank?

A. From time to time different amounts.

Q. Yes, that was the whole intention of this financing plan was to get money to operate on, wasn't it?

A. And to build the inventory, yes, not only to get the money, but to build your inventory up.

(Testimony of Robert E. Kersting.)

Q. That is right, you borrowed it to build the inventory up in order to keep doing business?

A. That is right.

Q. And in order to get the money to help build that inventory up, you borrowed it from the Valley National Bank? A. That is correct.

Q. And they would not lend it to you unless they had some kind of security, isn't that right?

A. That is usually the practice.

Q. Well, that was right in this case anyway, wasn't it? [24] A. Yes.

Q. And that security was represented by this stock of inventory that you had there and which you kept bringing in?

A. That is a true statement if you add to it, it was also represented by a mortgage against the building and the property and a mortgage against certain machinery, and so on. In other words, everything was in hock, that is true.

Q. Everything was in hock with the Bank to finance this operation?

A. That is right, and the Lawrence plan was a part of it, too, in hock.

Q. Now, with respect to these daily transactions in the sale of this merchandise, as a matter of fact, Mr. Kersting, your business was allowed to sell a certain amount by a specific release from the Valley National Bank each week, wasn't it?

A. As I testified before, I believe there was—there were certain limits placed on the amount that

(Testimony of Robert E. Kersting.)

we could sell during a time period. I think there was probably a time period when there weren't limits on the amount that could be sold, and following up to answer your question, yes.

Q. Do you recall whether or not there was not—in the original instance there was not a \$5000 [25] limit placed on it?

A. That could be true. As I say, I don't recall exactly.

Q. And toward the end of the operation, that limitation was cut down to \$500?

A. I could not say that.

Q. You don't recall one way or the other on that? A. No.

Q. Now, do you recall the reason for releasing of the goods was because of this position of your loan with the Bank?

A. That is true in a sense, yes, I do recall that we were to have a loan on a certain percentage of the inventory, we will say, 55 per cent, and when our inventory went down, when it was reduced to below the 55 per cent, if I made myself clear there. Of course, the Bank wanted one of two things to happen, either the inventory to increase some way, or for us to make a payment in cash against the loan, or it would remain at 55 per cent, and a little embarrassing part in there, we never knew from day to day what percentage the Bank was going to apply. It might be 70, 80, or 10 or 5, and when they did change, of course, the change was always the wrong way, of course. [26]

(Testimony of Robert E. Kersting.)

Q. As far as you were concerned?

A. As far as we were concerned.

Q. You mentioned some time ago in your testimony, Mr. Kersting, the possibility of selling a considerable portion of your stock there or your inventory at one particular time. Did you ever attempt to sell, say, an amount of \$5000 worth of your inventory at one time?

A. Yes, we did.

Q. And what happened?

A. Well, we didn't find the proper buyer.

Q. Well, you didn't have a purchaser for that amount?

A. That is right, yes.

Q. Did you have any relations with the Bank or with the Lawrence Warehouse Company about such a sale?

A. Well, to this extent, that over and over again I do recall this, that we were limited as to what we could sell in a given week on open account. That was—but I, over and over, had this idea, that we could sell anything for cash if we could go down to the Bank then and reduce—I mean, pay the Bank for what we sold. In other words, if we could sell \$10,000 on Tuesday morning, that was fine, but we had to take \$10,000 and put it right [27] down in the Bank, but we could make the sale. Now, that was my understanding.

Q. In other words, in order to release merchandise for a set sale, you would have to notify the Bank that the sale was made and you would place

(Testimony of Robert E. Kersting.)

that money with the Bank in payment on their loan, is that right?

A. I don't believe so, Mr. Craig. We had to notify them, that is true, but not prior to the sale. We had to notify them after the sale what had been realized.

Q. That is your present recollection of what the arrangement was?

A. That is my present recollection, yes.

Q. But you never actually sold such a quantity of goods to any one person?

A. Well, we did sell over our limit a number of times and either made the payment or had an argument about it, one or the other.

Q. Did you ever receive any instructions with respect to the delivery of merchandise down there, Mr. Kersting?

A. Instructions from who?

Q. From the Valley National Bank.

A. I would not doubt it. I mean I am sure we had correspondence and negotiations on what was to [28] be done or not to be done.

Mr. Craig: Mark that, please, for identification.

(The document was marked as Defendant Lawrence Warehouse Company's Exhibit C for identification.)

Q. (By Mr. Craig): You actually received instructions, or your corporation down there received instructions from time to time about this operation from the Bank?

(Testimony of Robert E. Kersting.)

A. I am sure we did, yes.

Q. And from the Lawrence Warehouse men that were on the job down there? A. Yes.

Q. You recall ever having seen the original or a signed copy of that particular letter which is marked as Defendant Lawrence Warehouse Company's Exhibit C for identification (handing the document to the witness).

A. I don't believe I ever saw this. I notice it concerns Mr. Saxon, the Receiver, so I suppose it was in effect after the bankruptcy had been entered into and I had no further contact down there. I don't recall this.

Q. You don't recall?

A. It is very possible it was used.

Q. You referred to Mr. Saxon. Was he in your employ prior to his appointment as temporary Receiver?

A. He was General Manager of the Company.

Q. And he was in charge of the operations down there? A. That is correct, yes.

Q. Now, Mr. Kersting, referring to this lump sale and the possibilities of which you have spoken, do you know of your own knowledge of any steps taken, that would have to have been taken under this arrangement with either the Lawrence Warehouse Company or the Valley National Bank, were there any documents that you had to sign or have had to sign?

A. You are referring to saying I could sell \$6000 worth some morning?

(Testimony of Robert E. Kersting.)

Q. Yes, that is right.

A. Yes, and I believe this would happen. A customer would come and walk in and, say it would be Thomas Brothers, say they would like to buy a thousand dollars worth of water pumps, whatever we had on there, and I think we would have said, "We can't sell on open account that much, we had a limit. If you have the cash, fine." He would lay down a check for \$6000 on the table—you understand, I am giving you my impression or my opinion. I might be wrong. I am telling you what could [30] happen, and it did happen similarly this way: We would get up 6000 water pumps and deliver them COD. However, along with it would be some type of Lawrence Warehouse withdrawal form for so many used water pumps, 6000 water pumps at one dollar, \$6000, on withdrawal. We understood that we had a certain limit that we could not exceed per week, but that one piece of paper would not give them or it would not even enter into anything more until the end of the week, and maybe during the next three or four days we might take in \$12,000 worth of merchandise, so we would not have any—the idea was, we were bound up so that we could not remove more than a certain limit from that inventory, but if we removed 50,000 and put in 60,000, I never thought anyone would care about it, then at the end of the week it would come out and, we will say, we didn't get in any more inventory, we had gone over our limit by \$4000, we had sold 6000, we were bound to only release 2000. We

(Testimony of Robert E. Kersting.)

would make out a check for \$4000, and it would accompany a Lawrence Warehouse release, send the check down to the Bank, and everyone would be happy. That was my understanding.

Q. And until that payment was made to the Bank you could not get any more goods, is that right? [31]

A. You mean we could not get any more goods, you mean, buy or sell?

Q. You could not take any more out of the warehouse?

A. Oh, yes, I don't know why we could not. We could take any amount out if we paid for it.

Q. You mean if you——

A. Oh, you had gone over the limit at the end of the week?

Q. Yes.

A. I understand what you mean there. Yes, I think we were technically bound right there until the Bank had the check and had cleared it for that past week, and we were technically over our limit and should not be operating on Monday. This was a technical thing. We certainly would not have closed on Monday, we would have opened up there, because we felt we were technically clear with the Bank as long as they had the cash.

Q. Didn't they actually close you up on one occasion there when that situation existed?

A. Way toward the end, I mean toward the end of the operation we were closed. Why, I never did know for sure. There were many reasons.

(Testimony of Robert E. Kersting.)

Q. In the earlier part of your operation, Mr. Kersting, you had no difficulty at all with [32] exceeding your limits that you were allowed to sell down there, were you? That is, you had some difficulty in selling the stuff, so you had no problem to exceed your \$5000 limit a week, if that is what it was in the earlier period of the operation of this business?

A. You mean in other words our sales were so low that we didn't come close to that?

A. No, I mean did you come close to it or did you exceed it? I don't think you had difficulty in that respect.

A. Well, as I say, Mr. Craig, that limit, as I remember it, was changed from time to time. We never knew what it was going to be or how it was arrived at, or anything else on a certain limit. We did on occasions exceed it. We did go over it and had to make arrangements with the Bank either through a cash payment or renegotiation again or another conference, or something. Also, there were periods of time there when all our sales were so low it didn't approach the limit. That is true, it varied, though.

Q. Do you know, Mr. Kersting, what percentage of your sales were over the counter cash sales as compared with your other account sales, order sales and the like? [33]

A. Well, of course, that varied a great deal as these conditions arose, but I think normally, in the

(Testimony of Robert E. Kersting.)

normal operation when we were making money, it was about 90-10—only about ten per cent over the counter.

Q. And the rest of it came through orders?

A. Yes, through the order desk. Now, during the past—the last six or seven months of operation, that might be changed very drastically, and if it had changed, I'd have said the counter sales went quite a bit up in percentage because of the fact that we weren't doing a lot of selling, so the percentage changed around quite a bit.

Q. Do you know who, during this financial arrangement, was on the order desk in the back part of the store there? That is where the order desk was; wasn't it?

A. That is right, yes.

Q. Do you know what employee was back there? Was he an employee of the Lawrence Warehouse or the Bank, or of the Central Auto?

A. I always—my recollection is always that the man on the order desk was an employee, a technical employee, at least, of the Lawrence Warehouse Company. I don't recall of any time when there was not a Lawrence man there. [34]

Q. Now, who paid him?

A. Yes, he was paid, I believe, twice a week by check from the Lawrence Warehouse Company and they billed us for the exact amount of the check and we reimbursed them.

Q. They billed you for other things too, didn't they?

A. Yes.

Q. They billed you for service down there?

(Testimony of Robert E. Kersting.)

A. That is right.

Mr. Craig: That is all.

Redirect Examination

By Mr. Perry:

Q. Mr. Kersting, I don't quite understand about this Defendant's Exhibit B for identification. That is the picture of the outside and inside of the buildings.

A. Yes.

Q. Did I understand you that that was made up into a loose leaf book, or something?

A. Yes, it was a loose leaf folder. You can see the two holes here in the picture. The pamphlet, I mean the leather cover, I think that said, "Central Auto Supply" on it, and then there would be a number of those pictures just like this, and as you would turn the picture there would be a blank page, a page with a typewritten explanation. In other words, they were pictures of the building and the counter and then we would have piece by piece all the merchandise sold with explanations and prices, and so on.

Q. That, you say, was made up along the latter part of your operations?

A. Quite a bit toward the end, yes.

Q. And I believe the Company was adjudicated bankrupt in July of 1947. Could you tell us about how long it was before that, that this document was——

A. I am sorry, I couldn't give the exact date on it. That was one of the—it was one of our last

(Testimony of Robert E. Kersting.)

attempts to furnish the salesmen with some type of selling pamphlet that they could take around and show to their customers, but I am quite sure it was toward the last, oh, we will say, two months' operations.

Q. That is all this was, was a book for your salesmen to take around when they were getting orders?

A. That was the main idea, yes.

Q. I asked you awhile ago about the cash sales over the counter, who got the money there, and you said the Central Auto Sales. [36]

A. The Cashier, yes.

Q. And I don't believe I asked you with respect to the sales that you would make on credit when they were paid. Who got the money there?

A. For instance, the open account checks that came in?

Q. Yes.

A. Well, they went to the same person, the Cashier of the Central Auto Supply Company.

Q. And they were deposited——

A. In the general account.

Mr. Perry: I think that is all.

Mr. Craig: One more question.

Recross-Examination

By Mr. Craig:

Q. In the operation of your business, Mr. Kersting, did you and your associates contemplate at

(Testimony of Robert E. Kersting.)

all at any time that the Valley National Bank and the Lawrence Warehouse Company would receive the proceeds from your operations there, from the actual counter sales and the other transactions there?

A. Well, certainly, Mr. Craig. You mean for interest that was due on the notes?

Q. Interest and payments. [37]

A. For payment on the notes finally. Yes at all times when we entered into this financial arrangement we were sure that we could repay everything. I mean after all, this business had made \$5000 a month at one time net, and we certainly anticipated repayment of everything.

Q. Well, what I mean is, Mr. Kersting, did you anticipate that the Valley Bank or the Lawrence Warehouse would receive directly this cash that you had taken in over the counter, or for the sale of merchandise?

A. That is a peculiar question, that they would receive it directly?

Q. That they would receive it.

A. Directly?

Q. I mean that you would take that particular money and pay the Bank or the Lawrence Warehouse Company.

A. Well, only as these obligations might mature or only as the interest might be due and payable. In other words, the Valley Bank to us was just another creditor as anybody else. We would not pay

(Testimony of Robert E. Kersting.)

them any sooner or any later, if that is what you are driving at. They were usually the first creditor, I might say.

Q. Well, there was no arrangement from the Bank [38] or anybody else that they were going to sit down there over the cash register and take that money out as it came in, was there?

A. Well, anyone there——

Q. I mean what you expected, is not this right, Mr. Kersting? What you expected to do is try to run your business as profitable as you could and when these obligations became due from the Bank, why, you would pay them in your ordinary course of the business from the moneys you had deposited in your business account, that is correct, that is the way you were operating it?

A. Yes, I think that is true.

Mr. Craig: That is all.

Mr. Perry: That is all.

(The witness was excused.)

The Court: We will have our morning recess at this time.

(Thereupon a recess was taken, after which all parties, as heretofore noted by the Clerk's record being present, the trial resumed as follows:)

Mr. Perry: If the Court please, the plaintiff offers in evidence the deposition of Harry Stock, which is designated in the Clerk's records as No. 10.

Mr. Craig: We object, if the Court please, to the introduction of the deposition, on the grounds that it is wholly immaterial and irrelevant to the issues in this case, has no probative value so far as the issues in this case are concerned, and there is no proper foundation laid for the majority of the questions in the deposition.

The Court: All right, it may be received subject to the objection.

Mr. Gust: May all of those objections go for both defendants?

The Court: Yes.

Mr. Gust: Whenever they are made.

Mr. Perry: I assume you want to make the same objection to all the depositions?

Mr. Craig: That is correct.

Mr. Perry: May the record so show?

The Court: They will be received subject to the objections.

Mr. Perry: That is, the deposition of C. D. Cadot, designated as No. 11 in the Clerk's records; the deposition of Paul S. Godber, No. 12; the deposition of J. C. Baldwin, No. 13; the deposition of E. R. Tolfree, No. 14; the deposition of F. A. Warburton, Jr., No. 15; the deposition of M. Blackburn, No. 16; the deposition of David Shapiro, No. 17; and the deposition of F. C. Westphal, [40] No. 18. As I understand your Honor's ruling, they are admitted subject to the objections made by counsel.

The Court: Yes.

PLAINTIFF'S EXHIBIT No. 2

Deposition of Harry Stock.

Interrogatory No. 1. State your name and address.

Answer to Interrogatory No. 1. Harry Stock, 3010-9th Avenue, Los Angeles, Calif.

Interrogatory No. 2. By whom are you employed?

Answer to Interrogatory No. 2. Merit Products Co., 3541 East Olympic Blvd., Los Angeles 23, Calif.

Interrogatory No. 3. State what office or position you hold in that company.

Answer to Interrogatory No. 3. I am the Manager.

Interrogatory No. 4. State how long you have been so employed by such Company, the different offices or positions you have held while so employed, and the periods during which you have held each such office or position.

Answer to Interrogatory No. 4. I have been employed by Merit Products Co. for the past two years and nine months. I have been the Manager during this entire period.

Interrogatory No. 5. Describe briefly your duties.

Answer to Interrogatory No. 5. It is my duty to supervise the operation of Merit Products Co., including purchasing, warehousing, selling, shipping and receiving of automotive replacement parts.

Interrogatory No. 6. Did your company sell any

Plaintiff's Exhibit No. 2—(Continued)

(Deposition of Harry Stock.)

merchandise to Central Auto Supply, Inc., a corporation, of Phoenix, Arizona, prior to its adjudication as a bankrupt in July, 1947?

Answer to Interrogatory No. 6. Yes.

Interrogatory No. 7. Of what did such merchandise consist?

Answer to Interrogatory No. 7. Automotive pistons and paint.

Interrogatory No. 8. Has your company been paid for such merchandise?

Answer to Interrogatory No. 8. Not entirely.

Interrogatory No. 9. If not, how much is due?

Answer to Interrogatory No. 9. \$419.30 is now due and has been due since May 1, 1947.

Interrogatory No. 10. Prior to your transactions with Central Auto Supply, Inc., did you or your Company receive any communications or statements in writing from said Central Auto Supply, Inc., with reference to its financial condition?

Answer to Interrogatory No. 10. No.

Interrogatory No. 11. At or before the time your merchandise was delivered to Central Auto Supply, Inc., were you, or your company, or any of its agents or officers advised that such merchandise when delivered was to be immediately delivered to Lawrence Warehouse Company and warehouse receipts issued therefor to Valley National Bank of Phoenix?

Answer to Interrogatory No. 11. No.

Plaintiff's Exhibit No. 2—(Continued)
(Deposition of Harry Stock.)

Interrogatory No. 12. If you, your company, or its officers or agents, had been so advised, would your company have sold and delivered such merchandise to Central Auto Supply, Inc.?

Answer to Interrogatory No. 12. No.

Interrogatory No. 13. During the course of your dealings with Central Auto Supply, Inc., did you, or your company, receive any form letters, mimeographed balance sheets or other communications from Mr. C. W. Saxon, Manager of said Central Auto Supply, Inc., or any other agent or officer thereof, apprising you or your company of the warehouse agreement between said Auto Supply and Lawrence Warehouse Company and the alleged lien of the Valley National Bank of Phoenix?

Answer to Interrogatory No. 13. No.

/s/ HARRY STOCK.

[Endorsed]: Filed August 6, 1948.

PLAINTIFF'S EXHIBIT No. 3

Deposition of C. D. Cadot.

Interrogatory No. 1. State your name and address.

Answer to Interrogatory No. 1. C. D. Cadot, 126 South Virginia Lee Road.

Interrogatory No. 2. By whom are you employed?

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of C. D. Cadot.)

Answer to Interrogatory No. 2. The Atlas Brass Foundry Company.

Interrogatory No. 3. State what office or position you hold in that Company.

Answer to Interrogatory No. 3. Secretary and Vice-President.

Interrogatory No. 4. State how long you have been so employed by such Company, the different offices or positions you have held while so employed, and the periods during which you have held each such office or position.

Answer to Interrogatory No. 4. Since 1942 to the present date I have held the office of Secretary of the Company, in charge of all office procedure, collections and credits, and in 1947 I was given the additional office of Vice-President.

Interrogatory No. 5. Describe briefly your duties.

Answer to Interrogatory No. 5. My duties are and have been general supervision of the office, sales, purchases, collections and credits.

Interrogatory No. 6. Did your company sell any merchandise to Central Auto Supply, Inc., a corporation, of Phoenix, Arizona, prior to its adjudication as a bankrupt in July, 1947?

Answer to Interrogatory No. 6. Yes.

Interrogatory No. 7. Of what did such merchandise consist?

Answer to Interrogatory No. 7. Automotive water pumps.

Plaintiff's Exhibit No. 3—(Continued)
(Deposition of C. D. Cadot.)

Interrogatory No. 8. Has your company been paid for such merchandise?

Answer to Interrogatory No. 8. No.

Interrogatory No. 9. If not, how much is now due?

Answer to Interrogatory No. 9. There is due us \$549.00.

Interrogatory No. 10. Prior to your transactions with Central Auto Supply, Inc., did you or your company receive any communications or statements in writing from said Central Auto Supply, Inc., with reference to its financial condition. If so, please describe each of such communications or statements, state how and when you received it, and hand it to the officer taking your deposition, to be marked as an exhibit to be attached to such deposition.

Answer to Interrogatory No. 10. Our first shipments were made to Central Auto Supply, Inc., during the month of July, 1946, and prior to those shipments we did not receive any communications from them, but in October, 1946, we received a letter prior to a shipment which we made them on November 5, 1946. We received a letter from Central Auto Supply, dated October 8, 1946, signed by R. E. Kersting, Vice President, and addressed to The Atlas Brass Foundry Company, which came through the usual course of the mails. It is marked "Exhibit A."

Plaintiff's Exhibit No. 3—(Continued)

(Deposition of C. D. Cadot.)

Interrogatory No. 11. At or before the time your merchandise was delivered to Central Auto Supply, Inc., were you, or your company, or any of its agents or officers advised that such merchandise when delivered was to be immediately delivered to Lawrence Warehouse Company and warehouse receipts issued therefor to Valley National Bank of Phoenix?

Answer to Interrogatory No. 11. No.

Interrogatory No. 12. If you, your company, or its officers or agents, had been so advised, would your company have sold and delivered such merchandise to Central Auto Supply, Inc.?

Answer to Interrogatory No. 12. No.

Interrogatory No. 13. During the course of your dealings with Central Auto Supply, Inc., did you, or your company, receive any form letters, mimeographed balance sheets, or other communications from Mr. C. W. Saxon, Manager of said Central Auto Supply, Inc., or any other agent or officer thereof, apprising you or your company of the warehouse agreement between said Auto Supply and Lawrence Warehouse Company and the alleged lien of the Valley National Bank of Phoenix? If so, describe each of such communications, balance sheets or statements, show how and when each was received, and hand it to the officer taking your deposition, to be marked as an exhibit to be attached to this deposition.

Plaintiff's Exhibit No. 3—(Continued)
(Deposition of C. D. Cadot.)

Answer to Interrogatory No. 13. No such communication was received, but on June 26, 1947, we did receive a mimeographed form letter signed by C. W. Saxon, General Manager. It is marked "Exhibit B." Enclosed in that letter was a mimeographed balance sheet. It is marked "Exhibit C."

/s/ C. D. CADOT.

[Endorsed]: Filed August 12, 1948.

PLAINTIFF'S EXHIBIT No. 4

Deposition of Paul S. Godber

Interrogatory No. 1. State your name and address.

Answer to Interrogatory No. 1. Paul S. Godber, 851 East Sixtieth Street, Los Angeles 1, California.

Interrogatory No. 2. By whom are you employed?

Answer to Interrogatory No. 2. Trojan Battery Company.

Interrogatory No. 3. State what office or position you hold in that Company.

Answer to Interrogatory No. 3. Vice President.

Interrogatory No. 4. State how long you have been so employed by such Company, the different offices or positions you have held while so employed, and the period during which you have held each such office or position.

Answer to Interrogatory No. 4. For about

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of Paul S. Godber.)

twenty-one years. I have been Vice President for one year; Manager for five years, and Salesman for fifteen years.

Interrogatory No. 5. Describe briefly your duties.

Answer to Interrogatory No. 5. Acting as General Manager; also in charge of sales.

Interrogatory No. 6. Did your company sell any merchandise to Central Auto Supply, Inc., a corporation, of Phoenix, Arizona, prior to its adjudication as a bankrupt in July, 1947?

Answer to Interrogatory No. 6. Yes.

Interrogatory No. 7. Of what did such merchandise consist?

Answer to Interrogatory No. 7. Storage batteries.

Interrogatory No. 8. Has your company been paid for such merchandise?

Answer to Interrogatory No. 9. There is now a balance that is unpaid.

Interrogatory No. 9. If not, how much is now due?

Answer to Interrogatory No. 8. There is now due \$1143.53.

Interrogatory No. 10. Prior to your transactions with Central Auto Supply, Inc., did you or your company receive any communications or statements in writing from said Central Auto Supply, Inc., with reference to its financial condition?

If so, please describe each of such communica-

Plaintiff's Exhibit No. 4—(Continued)
(Deposition of Paul S. Godber.)

tions or statements, state how and when you received it, and hand it to the officer taking your deposition, to be marked as an exhibit to be attached to such deposition.

Answer to Interrogatory No. 10. We did not at any time prior to our transactions with Central Auto Supply, Inc., receive any communication or statement in writing from them with reference to their financial condition.

Interrogatory No. 11. At or before the time your merchandise was delivered to Central Auto Supply, Inc., were you, or your company, or any of its agents or officers advised that such merchandise when delivered was to be immediately delivered to Lawrence Warehouse Company and warehouse receipts issued therefor to Valley National Bank of Phoenix?

Answer to Interrogatory No. 11. At or before the time our merchandise was delivered to Central Auto Supply, Inc., we were certainly not advised by any of its agents or officers that such merchandise when received was to be immediately delivered to Lawrence Warehouse Company and warehouse receipts issued therefor to Valley National Bank of Phoenix or anyone else.

Interrogatory No. 12. If you, your company, or its officers or agents, had been so advised, would your company have sold and delivered such merchandise to Central Auto Supply, Inc.?

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of Paul S. Godber.)

Answer to Interrogatory No. 12. If our company or any of our representatives had been so advised, no merchandise would have been shipped to Central Auto Supply, Inc., under such an arrangement.

Interrogatory No. 13. During the course of your dealings with Central Auto Supply, Inc., did you, or your company, receive any form letters, mimeographed balance sheets, or other communications from Mr. C. W. Saxon, Manager of said Central Auto Supply, Inc., or any other agent or officer thereof, apprising you or your company of the warehouse agreement between said Auto Supply and Lawrence Warehouse Company and the alleged lien of the Valley National Bank of Phoenix? If so, describe each of such communications, balance sheets or statements, state how and when each was received, and hand it to the officer taking your deposition, to be marked as an exhibit to be attached to this deposition.

Answer to Interrogatory No. 13. During the course of our dealings with Central Auto Supply, Inc., we did not receive any mimeographed balance sheets or form letters or other communications from Mr. C. W. Saxon, with the exception of the letter and report dated November 26, 1946, attached hereto as Exhibit "B" and with the exception of the letter dated December 26, 1946, attached hereto as Exhibit "C." These letters are referred to in

Plaintiff's Exhibit No. 4—(Continued)
(Deposition of Paul S. Godber.)

my answer to question No. 14. We received no communications regarding the Lawrence Warehouse Company or a lien of any kind held by the Valley National Bank of Phoenix.

Interrogatory No. 14. State in detail what arrangement, if any, your company had with Central Auto Supply, Inc., with reference to the sale and shipment of merchandise to said Central Auto Supply, Inc., during May, June and the 1st part of July, 1947, and with whom such arrangements, if any, were made.

Answer to Interrogatory No. 14. Prior to February, 1947, Central Auto Supply's account with our firm had become quite delinquent. In fact in December, 1946, they were placed on C.O.D. and we were told by Mr. Kersting that merchandise would be accepted on a C.O.D. basis and the balance of the old account would also be paid as fast as possible. Early in February of 1947, I visited Central Auto Supply Company, Inc., in Phoenix and by that time they had reduced their account with us to \$407.99. Mr. Kersting and Mr. Saxon both told me that they were in much better shape. They said they had received a letter of credit from the bank O.K.'ing them to operate on a current basis for any new bills incurred. They said that if we would again place them on open account they would guarantee that all bills would be paid on a current basis, and these new debts would have

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of Paul S. Godber.)

nothing to do with their old indebtedness. On this assurance we placed them on open account and on April 10, 1947, they owed us only \$319.91, having made another payment against the old account. On April 10th, 1947, we made a new shipment to them which brought their balance as of June 3rd to \$1143.53. No payment was ever made against this amount. A statement confirming the above is attached marked Exhibit "A." Also attached hereto, marked Exhibit "B," is a letter we received from Central Auto Supply, dated November 26, 1946, which letter has attached to it a carbon copy of a report stated in the letter to have been made by the George S. May Company. This carbon copy of the report is dated November 14, 1946, and was received with the letter marked Exhibit "B." We had asked for a copy of the letter of credit referred to in this letter but did not receive it. On December 17th, 1946, we again asked for a copy of the letter of credit, but still did not receive it, but as above mentioned upon my visit to Central Auto Supply, Mr. Bob Kersting and Mr. Saxon told me that any new bills would be paid and their new bank arrangement would not in any way tie up money received for this new merchandise when sold by Central Auto Supply. Also attached and marked Exhibit "C" is a letter of December 26th, 1946, signed by Central Auto Supply, per C. W. Saxon, which we received through the mail and

Plaintiff's Exhibit No. 4—(Continued)

(Deposition of Paul S. Godber.)

which states that they have improved their financial condition considerably in the past 90 days and that the net worth has been increased by \$10,000.00.

/s/ PAUL S. GODBER.

[Endorsed]: Filed August 18, 1948.

PLAINTIFF'S EXHIBIT No. 5

Deposition of J. C. Baldwin

Interrogatory No. 1. State your name and address.

Answer to Interrogatory No. 1. J. C. Baldwin, 911 East Pine Street, Seattle, Washington.

Interrogatory No. 2. By whom are you employed?

Answer to Interrogatory No. 2. Standard Motor Products, Inc.

Interrogatory No. 3. State what office or position you hold in that company.

Answer to Interrogatory No. 3. Pacific Coast Manager.

Interrogatory No. 4. State how long you have been so employed by such company, the different offices or positions you have held while so employed, and the periods during which you have held each such office or position.

Answer to Interrogatory No. 4. Twenty-nine

Plaintiff's Exhibit No. 5—(Continued)

(Deposition of J. C. Baldwin.)

years consecutively and continuously in the same business, the same position.

Interrogatory No. 5. Describe briefly your duties.

Answer to Interrogatory No. 5. I am in charge of the company's affairs for eleven western states.

Interrogatory No. 6. Did your company sell any merchandise to Central Auto Supply, Inc., a corporation, of Phoenix, Arizona, prior to its adjudication as a bankrupt in July, 1947?

Answer to Interrogatory No. 6. They did.

Interrogatory No. 7. Of what did such merchandise consist?

Answer to Interrogatory No. 7. Automotive and electrical repair parts.

Interrogatory No. 8. Has your company been paid for such merchandise?

Answer to Interrogatory No. 8. No.

Interrogatory No. 9. If not, how much is now due?

Answer to Interrogatory No. 9. \$707.23.

Interrogatory No. 10. Prior to your transactions with Central Auto Supply, Inc., did you or did your company receive any communications or statements in writing from said Central Auto Supply, Inc., with reference to its financial condition?

If so, please describe each of such communications or statements, state how and when you received it, and hand it to the officer taking your

Plaintiff's Exhibit No. 5—(Continued)

(Deposition of J. C. Baldwin.)

deposition, to be marked as an exhibit to be attached to such deposition.

Answer to Interrogatory No. 10. None.

Interrogatory No. 11. At or before the time your merchandise was delivered to Central Auto Supply, Inc., were you, or your company, or any of its agents or officers advised that such merchandise when delivered was to be immediately delivered to Lawrence Warehouse Company and warehouse receipts issued therefor to Valley National Bank of Phoenix?

Answer to Interrogatory No. 11. No. We sold it on a regular open account.

Interrogatory No. 12. If you, your company, or its officers or agents, had been so advised, would your company have sold and delivered such merchandise to Central Auto Supply, Inc.?

Answer to Interrogatory No. 12. Certainly not.

Interrogatory No. 13. During the course of your dealings with Central Auto Supply, Inc., did you, or your company, receive any form letters, mimeographed balance sheets, or other communications from Mr. C. W. Saxon, Manager of said Central Auto Supply, Inc., or any other agent or officer thereof, apprising you or your company of the warehouse agreement between said Auto Supply and Lawrence Warehouse Company and the alleged lien of the Valley National Bank of Phoenix?

If so, describe each of such communications,

Plaintiff's Exhibit No. 5—(Continued)

(Deposition of J. C. Baldwin.)

balance sheets or statements, state how and when each was received, and hand it to the officer taking your deposition, to be marked as an exhibit to be attached to this deposition.

Answer to Interrogatory No. 13. No. We did receive a letter dated June 26, 1947, signed by C. W. Saxon, setting forth the involvement of their company and to which was attached their balance sheet dated June 20, 1947, in which they asked all creditors to accept monthly payments of 2 per cent of the total owed or settle all outstanding bills at once on the basis of 25 per cent of total owed. However, according to our records, this letter was not received until after the merchandise amounting to \$707.23 had been shipped to them in Phoenix. In fact, we knew nothing of the condition of this company other than that they had previously paid their bills with us until we got this letter, and, as I said before, the merchandise had been shipped.

(Letter from Central Auto Supply, Phoenix, Arizona, dated June 26, 1947, marked Plaintiff's 1 for identification, same being returned herewith and attached hereto.)

(Concluded)

/s/ J. C. BALDWIN.

[Endorsed]: Filed August 21, 1948.

PLAINTIFF'S EXHIBIT No. 6

Deposition of Edward R. Tolfree

Interrogatory No. 1. State your name and address.

Interrogatory No. 2. By whom are you employed?

Interrogatory No. 3. State what office or position you hold in that company.

Interrogatory No. 4. State how long you have been so employed by such Company, the different offices or positions you have held while so employed, and the periods during which you have held each such office or position.

Interrogatory No. 5. Describe briefly your duties.

Interrogatory No. 6. Did your company sell any merchandise to Central Auto Supply, Inc., a corporation, of Phoenix, Arizona, prior to its adjudication as a bankrupt in July, 1947.

Interrogatory No. 7. Of what did such merchandise consist?

Interrogatory No. 8. Has your company been paid for such merchandise?

Interrogatory No. 9. If not, how much is now due?

Interrogatory No. 10. Prior to your transactions with Central Auto Supply, Inc., did you or your company receive any communications or statements in writing from said Central Auto Supply, Inc., with reference to its financial condition?

If so, please describe each of such communica-

Plaintiff's Exhibit No. 6—(Continued)

(Deposition of Edward R. Tolfree.)

tions or statements, state how and when you received it, and hand it to the officer taking your deposition, to be marked as an exhibit to be attached to such deposition.

Interrogatory No. 11. At or before the time your merchandise was delivered to Central Auto Supply, Inc., were you, or your company, or any of its agents or officers advised that such merchandise when delivered was to be immediately delivered to Lawrence Warehouse Company and warehouse receipts issued therefor to Valley National Bank of Phoenix?

Interrogatory No. 12. If you, your company, or its officers or agents, had been so advised, would your company have sold and delivered such merchandise to Central Auto Supply, Inc.?

Interrogatory No. 13. During the course of your dealings with Central Auto Supply, Inc., did you, or your company, receive any form letters, mimeographed balance sheets, or other communications from Mr. C. W. Saxon, Manager of said Central Auto Supply, Inc., or any other agent or officer thereof, apprising you or your company of the warehouse agreement between said Auto Supply and Lawrence Warehouse Company and the alleged lien of the Valley National Bank of Phoenix? If so, describe each of such communications, balance sheets or statements, state how and when each was received, and hand it to the officer taking your depo-

Plaintiff's Exhibit No. 6—(Continued)

(Deposition of Edward R. Tolfree.)

sition, to be marked as an exhibit to be attached to this deposition.

Answer to Interrogatory No. 1. Edward R. Tolfree—Business address, 25 W. 45th Street, New York City; residence, 400 East 49th Street, New York City.

Answer to Interrogatory No. 2. "X" Laboratories, Inc.

Answer to Interrogatory No. 3. President.

Answer to Interrogatory No. 4. Since we incorporated, before I owned the company and originated it. We incorporated in 1934. I have always been the President since the inception of the corporation.

Answer to Interrogatory No. 5. I supervised sales and finance.

Answer to Interrogatory No. 6. Yes.

Answer to Interrogatory No. 7. We sold this concern 300 assorted cartons of our products—"x" liquid, "x" superflush, "x" block liquid, "x" rust-off, "x" alkaline flush, "x" powder and "x" car wash.

Answer to Interrogatory No. 8. No.

Answer to Interrogatory No. 9. \$2379.72.

Answer to Interrogatory No. 10. No.

Answer to Interrogatory No. 11. No.

Answer to Interrogatory No. 12. No.

Answer to Interrogatory No. 13. No.

/s/ EDWARD R. TOLFREE.

[Endorsed]: Filed September 14, 1948.

PLAINTIFF'S EXHIBIT No. 7

Deposition of Frank A. Warburton, Jr.

Interrogatory No. 1: State your name and address.

Answer: Frank A. Warburton, Jr., 1761 London Road, Cleveland 12, Ohio.

Interrogatory No. 2: By whom are you employed?

Answer: Doan Manufacturing Corporation.

Interrogatory No. 3: State what office or position you hold in that company.

Answer: Office manager and credit manager.

Interrogatory No. 4: State how long you have been so employed by such company, the different offices or positions you have held while so employed, and the periods during which you have held each such office or position.

Answer: I have been employed by Doan Manufacturing Corporation approximately two and a half years, during which time I have held the position as office manager and credit manager.

Interrogatory No. 5: Describe briefly your duties.

Answer: Duties consist of supervising all office personnel, handling accounts receivable, accounts payable, collections, and any other detailed duties which occur.

Interrogatory No. 6: Did your company sell any merchandise to Central Auto Supply, Inc., a corporation, of Phoenix, Arizona, prior to its adjudication as a bankrupt in July, 1947?

Plaintiff's Exhibit No. 7—(Continued)
(Deposition of Frank A. Warburton, Jr.)

Answer: We have had one sale to Central Auto Parts of Phoenix, Arizona, which was made on August 27, 1946.

Interrogatory No. 7: Of what did such merchandise consist?

Answer: This sale consisted solely of automotive floor mats, thirty-six of one style and forty-two of another, a total cost of \$143.77, less freight allowance, terms two per cent, tenth prox., thirty days net.

Interrogatory No. 8: Has your company been paid for such merchandise?

Answer: They have received partial payment on this shipment for the amount of \$43.77, received on April 29, 1947.

Interrogatory No. 10: Prior to your transaction with Central Auto Supply, Inc., did you or your company receive any communications or statements in writing from said Central Auto Supply, Inc., with reference to its financial condition?

If so, please describe each of such communications or statements, state how and when you received it, and hand it to the officer taking your deposition, to be marked as an exhibit to be attached to such deposition. Answer: No.

Interrogatory No. 11: At or before the time your merchandise was delivered to Central Auto Supply, Inc., were you, or your company, or any of its agents or officers advised that such merchandise when de-

Plaintiff's Exhibit No. 7—(Continued)

(Deposition of Frank A. Warburton, Jr.)

livered was to be immediately delivered to Lawrence Warehouse Company and warehouse receipts issued therefor to Valley National Bank of Phoenix?

Answer: No.

Interrogatory No. 12: If you, or your company, or its officers or agents, had been so advised, would your company have sold and delivered such merchandise to Central Auto Supply, Inc.?

Answer: No, we would not.

Interrogatory No. 13: During the course of your dealings with Central Auto Supply, Inc., did you or your company receive any form letters, mimeographed balance sheets, or other communications from Mr. C. W. Saxon, Manager of said Central Auto Supply, Inc., or any other agent or officer thereof, apprising you or your company of the warehouse agreement between said Auto Supply and Lawrence Warehouse Company and the alleged lien of the Valley National Bank of Phoenix? If so, describe each of such communications, balance sheets or statements, state how and when each was received, and hand it to the officer taking your deposition, to be marked as an exhibit to be attached to this deposition.

Answer: No, we did not receive any.

/s/ FRANK A. WARBURTON, JR.

[Endorsed]: Filed September 16, 1948.

PLAINTIFF'S EXHIBIT No. 8

Deposition of M. Blackburn

Interrogatory No. 1. State your name and address.

Answer to Interrogatory No. 1. Maurine Blackburn, Fairfield, Illinois.

Interrogatory No. 2. By whom are you employed?

Answer to Interrogatory No. 2. Chefford Master Manufacturing Co., Inc.

Interrogatory No. 3. State what office or position you hold in that Company.

Answer to Interrogatory No. 3. Credit Manager.

Interrogatory No. 4. State how long you have been so employed by such Company, the different offices or positions you have held while so employed, and the periods during which you have held each such office or position.

Answer to Interrogatory No. 4. I have been employed by Chefford Master Manufacturing Co., Inc., continuously for the last thirteen years. I started as order clerk, typist, inventory clerk. I have had my present position approximately five years.

Interrogatory No. 5. Describe briefly your duties.

Answer to Interrogatory No. 5. Approval of credit orders and collection of accounts.

Interrogatory No. 6. Did your Company sell any merchandise to Central Auto Supply, Inc., a Corporation, of Phoenix, Arizona, prior to its adjudication as a bankrupt in July, 1947?

Answer to Interrogatory No. 6. Yes.

Plaintiff's Exhibit No. 8—(Continued)

(Deposition of M. Blackburn.)

Interrogatory No. 7. Of what did such merchandise consist?

Answer to Interrogatory No. 7. Automobile parts for replacement.

Interrogatory No. 8. Has your Company been paid for such merchandise?

Answer to Interrogatory No. 8. No.

Interrogatory No. 9. If not, how much is now due?

Answer to Interrogatory No. 9. \$282.64.

Interrogatory No. 10. Prior to your transactions with Central Auto Supply, Inc., did you or your company receive any communications or statements in writing from said Central Auto Supply, Inc., with reference to its financial condition? If so, please describe each of such communications or statements, state how and when you received it, and hand it to the officer taking your deposition, to be marked as an exhibit to be attached to such deposition.

Answer to Interrogatory No. 10. None at all.

Interrogatory No. 11. At or before the time your merchandise was delivered to Central Auto Supply, Inc., were you, or your company, or any of its agents or officers advised that such merchandise when delivered was to be immediately delivered to Lawrence Warehouse Company and warehouse receipts issued therefor to Valley National Bank of Phoenix?

Plaintiff's Exhibit No. 8—(Continued)
(Deposition of M. Blackburn.)

Answer to Interrogatory No. 11. No, sir.

Interrogatory No. 12. If you, your company, or its officers or agents, had been so advised, would your company have sold and delivered such merchandise to Central Auto Supply, Inc.?

Answer to Interrogatory No. 12. We would not.

Interrogatory No. 13. During the course of your dealings with Central Auto Supply, Inc., did you, or your company, receive any form letters, mimeographed balance sheets, or other communications from Mr. C. W. Saxon, Manager of said Central Auto Supply, Inc., or any other agent or officer thereof, apprising you or your company of the warehouse agreement between said Auto Supply and Lawrence Warehouse Company and the alleged lien of the Valley National Bank of Phoenix?

If so, describe each of such communications, balance sheets or statements, state how and when each was received, and hand it to the officer taking your deposition, to be marked as an exhibit to be attached to this deposition.

Answer to Interrogatory No. 13. The only thing that we received pertaining to the financial condition of Central Auto Supply, Inc., was a letter dated June 26, 1947, which was twenty-four days after the last shipment of merchandise to the Central Auto Supply, Inc., which letter had attached to it a purported financial statement. This letter was received by mail and it is in the same condition now as when received, with the exception of the pencil

Plaintiff's Exhibit No. 8—(Continued)
(Deposition of M. Blackburn.)

notations on the first page, which are in my handwriting and were my office memoranda.

I will hand you this letter, consisting of two pages, with the financial statement attached. The exhibit which you have just marked A-1 is the first page of said letter; the exhibit which you have just marked A-2 is the second page of said letter, and the exhibit which you have just marked A-3 is the financial statement attached to said letter.

/s/ M. BLACKBURN.

/s/ (MAURINE BLACKBURN.)

[Endorsed]: Filed September 21, 1948.

PLAINTIFF'S EXHIBIT No. 9

Deposition of David Shapiro

Interrogatory No. 1. State your name and address?

Answer to Interrogatory No. 1. David Shapiro, 1252 North Damen Avenue, Chicago.

Interrogatory No. 2. By whom are you employed?

Answer to Interrogatory No. 2. Everhot Products Co., 2001 West Carroll Avenue.

Interrogatory No. 3. State what office or position you hold in that company?

Answer to Interrogatory No. 3. Assistant book-keeper.

Plaintiff's Exhibit No. 9—(Continued)
(Deposition of David Shapiro.)

Interrogatory No. 4. State how long you have been so employed by such company, the different offices or position you have held while so employed, and the periods during which you have held each such office or position?

Answer to Interrogatory No. 4. I have been employed eleven months in the same position.

Interrogatory No. 5. Describe briefly your duties?

Answer to Interrogatory No. 5. Posting to accounts receivable and checking credits.

Interrogatory No. 6. Did your company sell any merchandise to Central Auto Supply, Inc., a corporation, of Phoenix, Arizona, prior to its adjudication as a bankrupt in July, 1947?

Answer to Interrogatory No. 6. Yes.

Interrogatory No. 7. Of what did such merchandise consist?

Answer to Interrogatory No. 7. Automotive parts.

Interrogatory No. 8. Has your company been paid for such merchandise?

Answer to Interrogatory No. 8. No.

Interrogatory No. 9. If not, how much is now due?

Answer to Interrogatory No. 9. \$81.31.

Interrogatory No. 10. Prior to your transactions with Central Auto Supply, Inc., did you or your company receive any communications or statements

Plaintiff's Exhibit No. 9—(Continued)

(Deposition of David Shapiro.)

in writing from said Central Auto Supply, Inc., with reference to its financial condition?

Answer to Interrogatory No. 10. No.

Interrogatory No. 11. At or before the time your merchandise was delivered to Central Auto Supply, Inc., were you or your company, or any of its agents or officers advised that such merchandise when delivered was to be immediately delivered to Lawrence Warehouse Company and warehouse receipts issued therefor to Valley National Bank of Phoenix?

Answer to Interrogatory No. 11. No.

Interrogatory No. 12. If you, your company or its officers or agents had been so advised, would your company have sold and delivered such merchandise to Central Auto Supply, Inc.?

Answer to Interrogatory No. 12. No.

Interrogatory No. 13. During the course of your dealings with Central Auto Supply, Inc., did you or your company, receive any form letters, mimeographed balance sheets, or other communications from Mr. C. W. Saxon, Manager of said Central Auto Supply, Inc., or any other agent or officer thereof, apprising you or your company of the warehouse agreement between said Auto Supply and Lawrence Warehouse Company and the alleged lien of the Valley National Bank of Phoenix?

Answer to Interrogatory No. 13. No.

/s/ DAVID SHAPIRO.

[Endorsed]: Filed September 21, 1948.

PLAINTIFF'S EXHIBIT No. 10

Deposition of F. C. Westphal

Interrogatory No. 1: State your name and address.

Answer to Interrogatory No. 1: F. C. Westphal; 617 Meadow Lane, Libertyville, Illinois.

Interrogatory No. 2: By whom are you employed?

Answer to Interrogatory No. 2: By Ammco Tools, Inc.

Interrogatory No. 3: State what office or position you hold in that company?

Answer to Interrogatory No. 3: Treasurer.

Interrogatory No. 4: State how long you have been so employed by such company, the different offices or positions you have held while so employed, and the periods during which you have held each such office or position?

Answer to Interrogatory No. 4: I have been employed for fifteen years with Ammco Tools, Inc. They were formerly known as Automotive Maintenance Machinery Co. They changed their name in October of 1946. I held the office of credit manager for five years, and the balance of over ten years as treasurer.

Interrogatory No. 5: Describe briefly your duties?

Answer to Interrogatory No. 5: My duties are in general financial affairs of the company; also I have charge of all accounting procedure.

Plaintiff's Exhibit No. 10—(Continued)

(Deposition of F. C. Westphal.)

Interrogatory No. 6: Did your company sell any merchandise to Central Auto Supply, Inc., a corporation, of Phoenix, Arizona, prior to its adjudication as a bankrupt in July, 1947?

Answer to Interrogatory No. 6: Yes, sir, we did.

Interrogatory No. 7: Of what did such merchandise consist?

Answer to Interrogatory No. 7: One L-42 five-foot Universal Line Boring Machine. That is the only item we have ever sold them.

Interrogatory No. 8: Has your company been paid for such merchandise?

Answer to Interrogatory No. 8: No, we have not.

Interrogatory No. 9: If not, how much is now due?

Answer to Interrogatory No. 9: \$103.82.

Interrogatory No. 10: Prior to your transactions with Central Auto Supply, Inc., did you or your company receive any communications or statements in writing from said Central Auto Supply, Inc., with reference to its financial condition?

Answer to Interrogatory No. 10: No.

Interrogatory No. 11: At or before the time your merchandise was delivered to Central Auto Supply, Inc., were you, or your company, or any of its agents or officers advised that such merchandise when delivered was to be immediately delivered to Lawrence Warehouse Company and warehouse re-

Plaintiff's Exhibit No. 10—(Continued)
(Deposition of F. C. Westphal.)

ceipts issued therefor to Valley National Bank of Phoenix?

Answer to Interrogatory No. 11: No.

Interrogatory No. 12: If you, your company, or its officers or agents, had been so advised, would your company have sold and delivered such merchandise to Central Auto Supply, Inc.?

Answer to Interrogatory No. 12: No, not on that basis.

Interrogatory No. 13: During the course of your dealings with Central Auto Supply, Inc., did you, or your company, receive any form letters, mimeographed balance sheets, or other communications from Mr. C. W. Saxon, Manager of said Central Auto Supply, Inc., or any other agent or officer thereof, apprising you or your company of the warehouse agreement between said Auto Supply and Lawrence Warehouse Company and the alleged lien of the Valley National Bank of Phoenix?

Answer to Interrogatory No. 13: No, we have not. We have never had any notifications or correspondence.

/s/ F. C. WESTPHAL.

[Endorsed]: Filed September 21, 1948.

Mr. Perry: The plaintiff rests.

DEFENDANTS' CASE

Mr. Craig: If the Court please, at this time we would like to make a motion for judgment at the close of the plaintiff's case, upon the grounds that the plaintiff has failed to prove the allegations of its complaint, specifically, that the plaintiff has failed to prove that there was any lack of possession of the inventories in question of the Lawrence Warehouse Company, that there wasn't anything in this transaction in violation of the Uniform Warehouse Receipts Act or the Statute referred to in plaintiff's complaint as Section 62-522. The Court will notice that the gravamen of the plaintiff's complaint is set forth in Paragraphs 3 and 4 of the complaint, that plaintiff has wholly failed to prove the allegations therein contained.

The Court: Very well, the motion will be denied.

Mr. Craig: At this time, if the Court please, we would like to offer the deposition of C. W. Saxon in evidence.

The Court: Any objection?

Mr. Perry: Yes, if your Honor please, the proper foundation has not been laid for it, and the deposition was taken here. I don't think there is any showing that the man is not available and could not testify here.

Mr. Craig: Well, will you stipulate, Mr. Perry, that the deposition was taken on December 1st, 1947, and that Mr. Saxon is in Los Angeles, California.

Mr. Perry: Is that a fact?

Mr. Craig: Yes.

Mr. Perry: Withdraw our objection, put it in.

The Court: It may be received, then.

(Thereupon the document was marked as Defendant's Exhibit D in evidence.)

Mr. Craig: Mr. Mitchell.

HAROLD A. MITCHELL

was called as a witness on behalf of the defendants, and being first duly sworn, testified as follows: [42]

Direct Examination

By Mr. Craig:

Q. Will you state your name, please, Mr. Mitchell? A. Harold A. Mitchell.

Q. Where do you reside, Mr. Mitchell?

A. 6 South 27th Avenue, Phoenix.

Q. Where are you employed?

A. By the Lawrence Warehouse Company operating as District Manager of the Phoenix territory and subject to the supervision of the Los Angeles office.

Q. How long have you been employed by the Lawrence Warehouse Company, Mr. Mitchell?

A. Well, since '35, as a regular employee.

Q. And in what capacities have you been employed?

A. I have been employed in the capacity of a Warehouse examiner, whose duty is to install these field warehouse set-ups, and as my present position of District Manager, supervising the examiners that

(Testimony of Harold A. Mitchell.)

are in the field, making regular examinations and installations.

Q. And were you employed by the Lawrence Warehouse Company at the time the arrangement was made with the Central Auto Supply in Phoenix, Arizona? A. Yes. [43]

Q. In '46 and '47, along in that period?

A. Yes, I was. In fact, I drew up the contract which was of course forwarded to my Los Angeles office for approval. That was on July 26th, 1946.

Q. In other words, you negotiated the contract between—— A. The Central Auto.

Q. The Central Auto and the Lawrence Warehouse Company and the Valley National Bank?

A. Yes, sir.

Q. On behalf of the Lawrence Warehouse Company? A. That is right.

Q. Now, Mr. Mitchell, will you explain to the Court just what this particular financing arrangement was, when it began with the Central Auto Supply Company, what transpired during the period it was in existence, and when it was terminated, if you know.

A. The contract was entered into on July 26, 1946, approval was received approximately the 30th of that month. Installation was immediately began as the account was in somewhat of a hurry for their financial set-up on the Valley National Bank. In the process of the installation, a lease was secured from the Central Auto Supply Company,

(Testimony of Harold A. Mitchell.)

which was then operating as a partnership. [44]

Q. At what location?

A. At 601 Adams. After the lease had been completed, the present warehouse agreement completed between the Bank, Central Auto Supply and the Lawrence Warehouse Company, partitions were built where they were necessary and locked off and segregated the commodity from other commodities from the general operation of the Central Auto Supply, and separating the commodities from, you might say, the main portion of the building used as display purposes and where customers had access to.

As soon as these partitions were finished, and in that respect I mean constructed and erected, we placed our signs on all the main entrances and inside the building where they could be seen from any reasonable position in the building, and employees were hired. At the time of the installation, I believe we hired five men, a warehouse manager, three assistants, and a bonded clerk. The duties of these men were simply this: The Warehouse Manager supervised the work of the assistants and the bonded clerk. The Warehouse Manager was responsible for receiving and delivering, and primarily responsible to seeing that the records were kept as his instructions were outlined to him. [45] Those instructions are contained in a regular book form. Inventory was taken after the warehouse manager and employees had been instructed to what we

(Testimony of Harold A. Mitchell.)

thought thoroughly enough. Inventory was taken and a warehouse receipt issued for the entire inventory. At that time, I think the inventory amounted to approximately \$36,000. That inventory was taken to the Bank in the company, I believe, of two of the partners, and the financial arrangements completed at the Bank.

At that time the Lawrence Warehouse Company received delivery instructions from the Bank allowing the Lawrence Warehouse Company to deliver to Central Auto & Supply Company \$5000 worth of merchandise at any one time, meaning that we could deliver \$5000 without a direct order for warehouse release, and when we reached the Five, we cut off the deliveries until settlement was made at the Bank for the \$5000 withdrawn. It didn't limit them to Five in one week. They could release 15 times or \$15,000 a week if they settled three times during the week. However, if they only delivered a hundred dollars during the week, they had to settle during the week for the hundred. That is elementary, the starting of the operation.

We had a man at the counter, a bonded man at [46] the counter, and an assistant. We had a warehouse manager, of course, in the back. We had a bonded man who withdrew the merchandise for the shop. We had an assistant who withdrew merchandise for what they called the carburetor department, and a bonded clerk. The bonded clerk's duties were to assimilate all the papers transmitted by the assistant and the warehouse manager during

(Testimony of Harold A. Mitchell.)

the day, and compiling them and recapping at the end of the day. That recap showed exactly the number of units and the dollar and cents value of the merchandise withdrawn during that day. That total figure was posted against our authority given to us by the Bank allowing us to deliver \$5000. That is the way we determined whether we were under the \$5000, or nearing that amount. That operation continued for some time along that line. About December of '47, I believe, November or December, the Central Auto Supply Company hired the services of the George S. May Company, industrial engineers, and in their appraisal of the business, very little of our operations changed, but the only thing that was changed was the withdrawing of several documents, or rather invoices that had no concern with our operations.

I think they dismissed a couple of counter men; in fact, we had a little discussion as to our employees who were all left intact at that time. That went on until December, I believe, when Mr. Saxon, of the George S. May Company, left the company and came with the Central Auto Supply Company as General Manager. During this time, however, our delivering instructions were changed from 5000 to 2000, and around in February, I believe, the Bank cancelled them altogether. We had to get a direct order for release before the merchandise could be removed out of the warehouse.

Q. February of what year?

(Testimony of Harold A. Mitchell.)

A. It was February of 1948, and January. That didn't last long, however. The delivery instructions were reinstated to 500. Now, on July 21st we received notice of bankruptcy, and the warehouse was locked. We immediately, under the supervision of the warehouse manager, took inventory. That took us until the 12th of August to take the inventory and price and extend it.

Q. Now, that was the 12th of August of what year? A. '47, or '48, rather.

Q. Well, when did this thing get started, Mr. Mitchell, do you remember?

A. July 26th or 30th, 1946.

Q. '46, and it went through '46? [48]

A. About July 21st, that first notice of bankruptcy, in '47. We vacated the property or our warehouse, removed our signs after securing a release for the commodities from the Bank on or about November 12th, I would say.

Q. Of '47? A. Of '47.

Q. I asked you that because on a couple of occasions here you said '48. I wanted——

A. Well, '47.

Q. '47. Proceed, Mr. Mitchell.

A. The actual records pertaining to the movement of commodities consisted of invoices made up by the various employees. Very seldom had we put our account or go to the expense of having special invoices pertaining to that particular business printed up. We used on this specific occasion, we

(Testimony of Harold A. Mitchell.)

were granted permission to use the regular form of invoices that the account was then using, with one exception, that we had a fourth copy inserted. Those copies, the original, I imagine, went to the—the original and duplicate, I imagine, went to their office. However, the triplicate and the fourth copy went to our warehouse manager who, in turn, turned them over to the bonded bookkeeper to post in perpetual card records. The third copy, [49] one of the employees of the account priced and extended. I believe that is about all.

Q. Now, can you explain your relationship with the Valley National Bank throughout this transaction? What negotiations or what steps did you take with the Bank during the course of these operations?

A. Well, as field warehousemen, we are a separate, independent entity storing goods for others for a charge, neutral custodian or trustee for collateral, so that we had to report to the Bank once a week, at least once a week, more often if necessary, as to the amount of goods in dollars and cents and the number of units of merchandise withdrawn. We also, of course, reported on a warehouse receipt form which is used as a pledge for the collateral on what was actually received in the warehouse during the week, however, if the Bank refused to sign our confirmation for delivery of commodities delivered from the warehouse during the week, we, naturally, were not authorized to deliver another dollar out of

(Testimony of Harold A. Mitchell.)

the warehouse until a copy of the release was signed and returned to the warehouse manager. We were at the Bank constantly on this particular operation, due to the fact of the financial condition, the change in [50] delivery instructions. I believe our documents were modified on March 17th, 1947, to conform to the new designated area and reducing the area. Not only that, but we had been notified on February 20th that the Company incorporated February 20th, 1947, that the Company had incorporated, which naturally meant that we should change the documents covering the contract and lease. That, of course, kept us constantly in touch with the bank.

Q. Will you state if you know, Mr. Mitchell, whether the warehouse receipts that were issued on these commodities were negotiable or non-negotiable warehouse receipts?

A. They were non-negotiable warehouse receipts made out to the Valley National Bank.

Q. Now, Mr. Mitchell, I show you a set of photographs marked Defendant's Lawrence Warehouse Exhibit No. A for identification, and ask you if those photographs truly depict the posting of your signs on the premises at 601 East Adams Street where the Central Auto Supply Company operated.

A. Yes, they do.

Mr. Craig: We offer the photographs in evidence.

Mr. Perry: We have no objection.

(Testimony of Harold A. Mitchell.)

(Thereupon the documents were received as Defendant Lawrence Warehouse Company's Exhibit A [51] in evidence.)

Q. (By Mr. Craig): Now, Mr. Mitchell, I will refer to Plaintiff's Exhibit No. 1 in evidence, and I call your attention to the blueprint attached to the first instrument entitled "Lawrence Warehouse Company Field Warehouse Lease," dated March 17th, 1947, which blueprint is marked Exhibit A, and ask you to explain the significance of the red line on that blue print.

A. Well, a copy of this blueprint is posted at the main entrance of the warehouse. This instrument or this blueprint states on the top: "All of the space as shown outlined in red on this diagram is leased to Lawrence Warehouse Company, warehousemen, and is being operated as Phoenix, Arizona, Warehouse No. 21." Portions of that red line were fenced and others being behind solid walls, and all commodities that were pledged to the Bank and the Lawrence Warehouse receipts were kept within that area until delivered.

Q. Now, Mr. Mitchell, does the Warehouse Company's Exhibit A in evidence, I will ask you to state whether or not those signs which appear in those photographs as notices over the name of the Lawrence Warehouse Company were the signs which were posted on the premises? [52]

A. Yes, sir.

(Testimony of Harold A. Mitchell.)

Q. And I call your attention to the photograph depicting the fences in front of apparently the hallways or the walkways through the stacks of commodities, and ask you if those fences as depicted are the fences which you had placed upon those premises?

A. Those are the fences that required the account to construct before we issued our first warehouse receipts.

Q. Now, I call your attention to the photograph which apparently discloses the interior and the front counter of the store building, and direct your attention to the right hand side of the photograph which depicts apparently a gate, upon which there is a hasp and padlock, and ask you who the hasp and padlock belonged to?

A. Those are the Lawrence Warehouse Company's padlocks, the name imprinted on them, and while this picture does not show the rest of the gates, they are all alike.

Q. They are all alike, and who has the key to those padlocks?

A. Those keys, I might have failed to mention in summarizing the operation and describing the operation, the keys, complete padlock were given to the bonded employees who had sole possession and kept those keys in their possession at all times and not allowed to——

Q. Bonded employees of whom?

A. The Lawrence Warehouse Company. They

(Testimony of Harold A. Mitchell.)

were not allowed to even pass them back and forth between the employees.

Q. Did at any time, Mr. Kersting or any of the other officers or persons in charge, or employees of the Central Auto Supply, whether it was a partnership or a corporation, have keys which would allow them to enter the premises of which you speak? A. No, sir.

Q. Do you know whether or not at the conclusion of this operation, Mr. Mitchell, all locks and keys were accounted for to the Lawrence Warehouse Company by the employees of the Lawrence Warehouse Company?

A. Yes, sir. At the time each man is discharged or relieved of his duties, the examiner who is making the change or dismantling the warehouse, must account for all of the keys and locks at that time. In this instance, however, when the dismantling of the warehouse was performed by the Lawrence Warehouse Company, our signs removed, [54] blueprint, stock cards, showing what commodities were held for the Valley National Bank which were all posted throughout the warehouse, we had to leave the locks on for a period of a short time for the courtesy of the Bank, who had no locks.

Q. What do you mean, Mr. Mitchell, when you refer to bonded employees, such as your bonded clerks?

A. Well, these employees are on the payroll of the Lawrence Warehouse Company. They are paid

(Testimony of Harold A. Mitchell.)

according to their employment agreement signed at the time of employing them for a stipulated salary. They are bonded by Lloyds of London, \$500,000 fidelity bond. Does that answer your question?

Q. Yes. With reference to the employment agreements with employees, Mr. Mitchell, state whether or not this was in writing, and if so, who signs them and if not, how they are arranged?

A. The employment agreement is in a type-written form. The contract stipulates the salary which is agreed upon between the Lawrence Warehouse Company and the employee. It, in one sense, reminds him of his responsibility as to his duties, signed by the Lawrence Warehouse Company, Warehouse Examiner or representative, and, of course, it is forwarded to the operating office which in this [55] case, is the Los Angeles office.

Q. Does the depositor, as in this case the Central Auto Supply Company, have anything to do with the employment of the Lawrence Warehouse Company, on any given individual?

A. No, sir. In this particular instance, we, at the beginning of our operation, did select the employees who had formerly worked for the account. We did this for one specific purpose. These boys knew the inventory from the front to the back door. We, of course, screen them, pick, you might say, the more intelligent ones, those that were actually handling the merchandise and in a position to know the requirements and, of course, they were

(Testimony of Harold A. Mitchell.)

taken off of our account's payroll and placed on our payroll.

Q. Now, is that customary throughout your operations or throughout the operations of the Lawrence Warehouse Company throughout the United States?

A. That is customary throughout the United States. There are some exceptions as was in this case. When, I forget, I believe it was in October of '47, or November.

Q. '46?

A. '46, rather, that some of our employees left for better positions, but I had to go out and pull in other employees that I had in other warehouses to fill those positions.

Q. State, Mr. Mitchell, the method of paying your employees. Did you pay them directly or did the Lawrence Warehouse Company pay them directly, or did they wait for advice from the depositor or anybody else with respect to the payment of their salary claims?

A. No, no, these checks to our employees came directly from our payroll department in our Los Angeles office, and checks in check form, of course, addressed to the employees as to their title. These checks were usually sent in care of the warehouse manager to distribute them to the various store employees, assistants or the bonded clerks.

Q. Now, Mr. Mitchell, with respect to these salary checks, all the accounting procedure necessary

(Testimony of Harold A. Mitchell.)

in the presentation of those checks with respect to the withholding taxes and unemployment insurance and everything of that nature, was done by the Lawrence Warehouse Company, was it?

A. Oh, yes, the payroll department in the Los Angeles office makes the deductions or withholding, security, old age, makes all deductions that is [57] necessary on the regular form of payroll check.

Q. Now, Mr. Mitchell, you were here in Phoenix throughout the term of this operation, were you?

A. Yes, sir. There were several times when I was on the road covering other warehouses located in different parts of the State, New Mexico, and Texas, which is the territory covered.

Q. Did you maintain your position in a supervisory capacity over this operation throughout that period?

A. In two senses: When the operation was begun I was Warehouse Examiner at the time, and of course, at the beginning of any operation we have to continually call on the warehouse, review instructions to employees, and I imagine I was down there two or three times a week for the first six or seven weeks, and then our program is often changed a bit, we hire more examiners and when we did this, I went strictly in the supervisory capacity.

Q. Mr. Mitchell, from your experience with this operation and your knowledge of the operation,

(Testimony of Harold A. Mitchell.)

do you know of any time during the period of this arrangement when any person of the Central Auto Supply Company or the Valley National Bank, or any other person was allowed within the warehouse area without first securing the consent of the Lawrence [58] Warehouse Company and without having a representative of the Lawrence Warehouse Company present at the time?

A. No, sir. They requested it several times, Mr. Saxon did. But the main purpose and request were merely to cut down expenses, not realizing that our position was one of daily for hire, and as soon as he was informed what our rules and regulations called for, he conformed to them in their entirety.

Q. Did you ever stop deliveries or prevent withdrawals of merchandise from that establishment?

A. Yes, we did. That was towards the end of the operation. The exact date of that one time I don't remember. It seems to me it was in February.

Q. What were the nature of those——

A. Well, we had reached the limit set forth by the Valley National Bank of the amount of the commodities that could be delivered at any one time before settlement was made at the bank. There was one occasion that we stopped all deliveries. There was another occasion in which we submitted our confirmation delivery or record of what had been taken out of the warehouse during the week which the Bank refused to sign, we learned, be-

(Testimony of Harold A. Mitchell.)

cause the account did not make payment. This was [59] reinstated later. I believe that happened on a weekend. It was reinstated the following morning by the Bank after making their arrangements with the account to pay.

Q. Mr. Mitchell, did you, in the course of this operation, ever have to recapture merchandise which you believed to have been improperly withdrawn from this warehouse?

A. Yes, sir, there was a time when the Seal Power representative, Mr. Fred Brown, took some merchandise out of the warehouse; in fact, had it at the loading dock of the truck line, the shipping concern, when myself and the warehouse manager had to go to the shipping dock and tell them that they were handling hot merchandise, which was returned immediately, put back in stock. I don't know what was behind that deal, but it seems to me that Freddie Brown had a claim of some sort.

Q. Did you ever lock the premises up or advise the Central Auto Company that you would close them up or close the warehouse with respect to subsequent deliveries for failure to pay charges due to the agreement entered into between Lawrence and Central?

A. That has happened several times when our charges got up to where they endangered the margin of security held by the Bank and where it rose to [60] a figure that just didn't warrant our carrying on unless they were paid in full. That hap-

(Testimony of Harold A. Mitchell.)

pened several times, and if my memory serves me correctly, we were paid before we did take any desperate, or any position of locking the doors entirely.

Q. Did the Valley National Bank ever pay your charges in order to prevent the stopping of the operation over there?

A. Toward the last part of the operation, when it was clear that the Central Auto Supply could not meet their charges and their payments of the charges according to our contract, the Valley National Bank did step in and take care of them.

Mr. Craig: You may cross-examine.

Cross-Examination

By Mr. Perry:

Q. Mr. Mitchell, I notice in your testimony you referred a number of times to "the account." You said, "I required the account to build these partitions before I issued the first warehouse receipt. Who do you mean by "account"?"

A. By "account," I am speaking of the account of the Lawrence Warehouse Company, and in this case, the Central Auto Supply.

Q. Wherever you used in your testimony the words "the account," then you mean the Central Arizona [61] Auto Supply?

A. Yes, sir.

Q. And how did this man Brown get in there and get this merchandise that he took out to the loading dock?

(Testimony of Harold A. Mitchell.)

A. That part of the actual withdrawal of that was made in more or less in a backhanded way. This merchandise was ordered to be shipped. It happened to be All Seal Power Piston Rings, and after the piston rings were packed, we recorded them as going out under our delivery instructions. I believe the amount ran close to \$1200. There was a warehouse manager, the original warehouse manager that got tipped off that this particular merchandise was not being withdrawn for sale, that it was more or less on a claim that Mr. Brown was trying to get his hands on.

Q. Well, wasn't it a fact that his company had delivered this merchandise to the Central Auto Sales on open account and it had not been paid for and he was trying to get it back, wasn't that the situation?

A. Well, I don't know the exact situation there. It was delivered to us by the Central Auto either on the original inventory or subsequent shipment received into the warehouse as commodities to be—

Q. You don't know whether any of the merchandise that was delivered to you by the Central Auto Sales was paid for or not, do you? A. No.

Q. You did know that a great deal of it was purchased on open account, isn't that true?

A. Well, in the ordinary course of business, that would be true.

Q. It was purchased on open account and then delivered to you by the purchaser and you issued your warehouse receipt to the Valley Bank, is that correct? A. Yes, sir.

(Testimony of Harold A. Mitchell.)

Q. Now, with reference to these padlocks that you told about, those gates weren't kept padlocked during the business hours, were they?

A. No, sir, they were kept padlocked when the warehouse was open for business and supervised by one of our employees, many times, and for a long time we had to lock them because of not having enough employees.

Q. You say they were kept padlocked when the place was open for business?

A. No, no, they are open, the doors were open for business.

Q. And there was nothing to prevent any employee [63] or officer of the Central Auto Sales from walking in that department or that portion of the place that was leased to you, was there?

A. No, only with permission of the Lawrence Warehouse Company in the act of delivering commodities to the warehouse or receiving commodities that was to be delivered from the warehouse, or assisting and caring for the preservation of the goods.

Q. Now, prior to your warehousing agreement here, or lease, whatever it is, this building was occupied by the Central Auto Sales, wasn't it?

A. Yes, sir.

Q. And then this lease was executed——

A. On July 26th, yes, sir.

Q. From the Central Auto Sales to you for a portion of this building? A. That is right.

(Testimony of Harold A. Mitchell.)

Q. And then you required that some wire partitions be put up where there weren't walls?

A. That is right.

Q. Now, you hired then, I believe you told us, this warehouse manager, two assistant warehouse managers and a bonded clerk, is that right?

A. To start with, there were three assistants and a bonded clerk. [64]

Q. They had all been in the employ of the Central Auto Sales, hadn't they?

A. Central, yes, sir, I believe they all had.

Q. And they continued in your employ for how long?

A. Well, we had several changes down there. I'd have to refer to the files to get the exact dates, but the bonded clerk changed several times. We had several changes with the counter men. The counter men were put there for a specific purpose.

Q. How about the warehouse manager, did he stay all the time?

A. No, the warehouse manager was changed, I believe, in October.

Q. Now, who hired the people that replaced those original employees, did you?

A. I, myself, as representative of the Lawrence Warehouse Company, hired them.

Q. I notice in Mr. Saxon's deposition here, he says that he did. That is not correct, is it?

A. Well, in this specific change, there was quite a change right after he was selected as general

(Testimony of Harold A. Mitchell.)

manager. We changed three men. Two men I brought indirectly from other warehouses and he approved them as having knowledge of that particular inventory. The warehouse manager was advertised [65] for and I believe six or seven showed up. We all sat in and listened to his past experience, where he had worked, and finally a warehouse manager was selected. I selected him. He was approved, of course, by one of the officers of the Company.

Q. Of this Central Auto Supply?

A. Of the Central Auto Supply.

Q. Was that Mr. Saxon?

A. I believe at that time that was Mr. Hargrove, Bill.

Q. Now, all of those employees that you testified to that were paid by the Lawrence Warehouse Company, you know, do you not, that the Lawrence Warehouse Company billed the Central Auto Supply for their wages, and that money was paid by the Central Auto Supply to the Lawrence Warehouse?

A. According to our contract, our field warehouse storage contract with any concern, they agree to reimburse us for any services rendered at the warehouse.

Q. Well, that is what was done in this instance, wasn't it?

A. Certainly, we bill back for all of our services.

Q. You paid those bills and then you sent the

(Testimony of Harold A. Mitchell.)

bill to the Central Auto Supply and they paid you, [66] is that right?

A. Well, we invoice them for their salary, of course, and are in turn billed back, which is a part of our service charges.

Q. Now, you referred awhile ago to this Brown trying to get this merchandise out and that you said it was hot merchandise. What do you mean by that?

A. Well, I mean that under the circumstances of the withdrawal, we felt the merchandise was withdrawn from the warehouse under the pretense of having a sale for it locally. After the warehouse manager realized what kind of withdrawal it was, even though we were under our limit allowed by the Bank, I was notified and I immediately went to the warehouse and the shipping dock and secured the merchandise.

Q. By "hot merchandise," you mean then it was merchandise that this man was trying to get in payment of a debt, is that right, or what did you mean by the term "hot merchandise"?

A. Well, I meant by that that he had absolutely no right or title to the merchandise or any legitimate order to ship.

Q. Even though he had not, or his Company had not been paid for the merchandise? [67]

A. Well, that part of it, as warehouse men, we would not know. I do realize, though, that had he approached the Lawrence Warehouse Company and

(Testimony of Harold A. Mitchell.)

the Bank, we would probably have both agreed to allow him to take it. The amount was so small.

Q. You didn't, though?

A. Well, he didn't approach us, he took it.

Q. Now, when was that with reference to the bankruptcy of the Central Auto Supply, how long prior?

A. I'd say that was prior to October.

Q. Prior to October of what year? A. '46.

Q. It was, then, shortly after you had made this original lease?

A. Well, it was the same year, yes.

Q. And when was it you cut off the deliveries to the Central Auto Supply?

A. You mean the final cut-off?

Q. No, you said you cut off the deliveries at one time.

A. Well, the exact dates of that, I'd have to refer to the examiner's reports on that.

Q. How long did that remain cut off?

A. I'd say over the week-end, or maybe two or three days. [68]

Q. Well, without the exact dates, can you give us about when that was?

A. Well, say, January, 1947.

Q. Now, when you first went in there under your lease and required that the Central Auto Supply build these fences or partitions, or whatever you call them, did you require that the Central Auto Supply publish any notice under the Bulk Sales

(Testimony of Harold A. Mitchell.)

Act that it was turning this merchandise over to you?

Mr. Craig: We object to that question upon the ground that it calls for a legal conclusion of this witness.

The Court: Well, that would be a question of fact, whether they published any notice.

Mr. Craig: Well, you might ask him whether he published any notice.

Mr. Perry: That is what I intended.

A. We published a notice at all entrances to the warehouse and within the warehouse that the commodities were held under the custody of the Lawrence Warehouse Company.

Q. Did you require that the Central Auto Supply publish any notices in any newspaper?

A. No, sir.

Q. Do you know whether that was done? [69]

A. No, sir.

Q. You mean you know it was not done?

A. I do not know whether it was done.

Q. Did you require that the Central Auto Supply record any notice in the County Recorder's office? A. No, sir.

Q. You didn't at any time regard the Lawrence Warehouse Company as the owner of this property, did you?

A. As instigating the lease and have full control over the areas that had been leased, yes.

Q. I mean the merchandise within that area.

(Testimony of Harold A. Mitchell.)

A. Not as owners, we were storers of the merchandise.

Q. You never regarded yourself as owners?

A. No, sir.

Q. You said awhile ago in your other testimony that you regarded yourselves as bailee for hire?

A. Bailee for hire or custodian for collateral.

Q. Who do you figure hired you?

A. The Central Auto Supply Company entered into a contract with us for the storage of their material.

Q. And for whose benefit did you consider you were hired?

A. For the benefit of the Central Auto Supply. [70]

Q. Not for the benefit of the Valley National Bank? A. No, sir.

Q. Huh?

A. No, sir. These receipts could have been issued to any person, any bank, so designated by the Central Auto Supply.

Q. You knew that the deal was, they were to be issued under the Valley National Bank because it was loaning them money?

A. Oh, yes, sure. They could have changed in the interim, which often happens.

Q. There wasn't any mystery about that, that was the purpose of the transaction, wasn't it?

A. Oh, yes.

Mr. Perry: That is all.

(Testimony of Harold A. Mitchell.)

Redirect Examination

By Mr. Craig:

Q. Mr. Mitchell, as a matter of fact, under this operation that you were conducting down there which you had been directed so to do, you could have issued warehouse receipts to anybody regardless of whether it was the Valley National Bank or anybody else? A. Yes, sir. [71]

Q. Had your depositor directed you to issue them? A. That is right.

Q. As far as your operation in the field warehousing business, Mr. Mitchell, this operation was no different than any other operation that you conduct, is that right? A. That is right.

Mr. Craig: That is all.

Recross-Examination

By Mr. Perry:

Q. It was different in this respect, that in this case the Central Auto Supply went bankrupt and that does not happen always, does it?

A. No, sir.

Mr. Perry: That is all.

The Court: We will suspend at recess until 1:30.

(Thereupon a short recess was taken.)

1:30 o'Clock, P.M., March 17, 1949

All parties as heretofore noted being present, the trial resumed as follows: [72]

HAROLD A. MITCHELL

resumed the witness stand and testified further as follows:

Mr. Craig: At this time, if the Court please, may the record show that the deposition of Mr. C. W. Saxon be written into the record?

The Court: All right.

DEPOSITION OF C. W. SAXON

C. W. SAXON

was called as a witness on behalf of the plaintiff, and being first duly sworn by the Notary, testified as follows:

Direct Examination

By Mr. Perry:

Q. Will you state your name, please?

A. Chester Saxon.

Q. Where do you live?

A. 2317 West Jefferson.

Q. What is your business or occupation?

A. President of the Davis Ventilated Awning Company.

Q. Did you have some connection with the Central Auto Supply Company, a corporation?

A. I was the manager.

Q. During what period? [73]

A. From about the 1st of December until the end of the temporary receivership.

Q. The 1st of December of what year?

(Deposition of C. W. Saxon.)

A. 1946 until July 21st, 1947.

Q. Now during a portion of that time you were manager and later temporary receiver, is that correct?

A. That is correct.

Q. And during what portion of that period were you the manager of the business?

A. Until the time of the temporary receivership.

Q. Do you recall when that was?

A. I believe it was July 21st.

Q. And then you were temporary receiver under appointment by the United States District Court for this district for how long?

A. About six weeks, up until the permanent trustee was appointed.

Q. Now where was the place of business of the Central Auto Supply Company while you were manager?

A. 601 East Adams.

Q. And will you just describe to us the interior of that place of business, how it was laid out at that time?

A. Well, the building itself consisted of two buildings, two main buildings, a large [74] building that included the warehouse, machine shop, and a smaller building that had been built previous to the construction of the large building, that was used as a carburetor repair laboratory and ignition repair, and a leased separate business in the front portion.

Q. And what was the separate business?

A. Wood, radio and electronics. It wasn't that way during all that time. It was leased I believe about the 1st of April.

(Deposition of C. W. Saxon.)

Q. And prior to that time what was the portion of the building that was later leased out used for?

A. We had some storage in there, mostly scrap as a matter of fact, miscellaneous parts and so forth.

Q. Now with respect to the portion of the property that you used, was some of that divided off by wire partitions?

A. Yes, sir, it was.

Mr. Perry: Will you mark this as Plaintiff's Exhibit A for identification, please?

(The document referred to was marked Plaintiff's Exhibit A for identification by the Notary.)

Q. (By Mr. Perry): Mr. Saxon, I show you a [75] document that is marked Plaintiff's Exhibit A consisting of three pages, the last one being a blueprint, and the blueprint itself being marked Exhibit A, Lawrence Warehouse Company, Phoenix, Arizona, Arizona Warehouse Number 21, and ask you if that fairly and accurately represents the premises you have been describing and if the red lines denote the partitions that you have mentioned.

A. That is right.

Q. Now, during the period that you were manager there will you describe to us how sales were made by you, where the goods or property sold were within the partitions shown within the red lines on the exhibit I have handed you.

A. In other words—

(Deposition of C. W. Saxon.)

Q. Just what was done, how it was handled.

A. About 80 per cent of our business, of course, was sold out the back door or was delivered by a delivery boy. There were some sales over the counter, but the majority of the sales in our particular type of business come in over an order desk. A man fills the order out of the storeroom, and he is in charge of the delivery boy who then makes the delivery. As far as the counter sales are concerned, some sales go out over the counter, and even some sales that would [76] be made up from our order desk in the rear would be picked up at the counter by the customer. Now we had—the setup in the plant was that we had an order desk man on full time and a counter man on full time, and sometimes we had during part of that period, we had as high as two and three counter men and assistant order desk men.

Q. And did you have any stock down there that was not within these partitions that are shown here?

A. Yes, we did have. We had considerable stock of wire and such in the carburetor and electrical section. However, if I am getting this correctly, that was never carried under Lawrence inventory. The only thing outside that we had would be items that were in display.

Q. Well, on a sale of items that were not within the Lawrence inventory, was that treated any differently as far as handling it was concerned than a sale of items that were within the Lawrence inventory?

(Deposition of C. W. Saxon.)

A. Would you mind repeating that again?

Mr. Perry: Would you read it?

(The question was read by the Notary.)

A. Well, yes, to a certain extent. For example, in the sale of rebuilt motors, which [77] was the largest amount of sales we had—when I said 80 per cent of the sales were out the back door, I am speaking of sales out of the warehouse. We did make certain sales out of our shop handled in an entirely different manner than the sales out of the warehouse. We had a man on the order desk that was the warehouse manager. We were constantly taking parts from the warehouse into the shop. Now of course, those were charged out of Lawrence by the Lawrence Warehouse manager, but the sale was consummated on an entirely different type of ticket. That would be the greatest deviation from regular sales that we had.

Q. Lawrence Warehouse Company did maintain a man there, did they? A. Definitely.

Q. At all times? A. More than one.

Q. How many?

A. Well, I believe we had as high as four or five and never less than two, I believe.

Q. And did you pay those employees or did Lawrence Warehouse Company pay them?

A. Lawrence Warehouse Company paid them and we of course reimbursed Lawrence Warehouse. [78]

(Deposition of C. W. Saxon.)

Q. I see. Now if a customer came in to buy an item that was within the Lawrence inventory as you have mentioned, just tell us how that transaction would be handled.

A. For example a counter sale?

Q. A counter sale.

A. Well, the customer would come in—do you want all the mechanics of the sale?

Q. Yes.

A. A customer would come in, approach the counter, and would tell the counter man what is it he wanted. Now the counter man would go to stock, into the stockroom, bring out the parts and make out the counter ticket in triplicate, and made the ticket up according to the parts that were sold, the proper discounts, and actually handled it even down to receiving the money for the same, and in many cases, in some cases it was sent to the Cashier.

Q. The counter man, was that an employee of the Central Auto Sales or the Lawrence Warehouse?

A. The counter man was a regular Lawrence Warehouse man.

Q. A Lawrence Warehouse man?

A. That is right.

Q. Did you have anyone in your firm that [79] made sales direct?

A. Yes, we did, although we were the—we were set up in this manner, we would not make any sales at any time unless a Lawrence Warehouse

(Deposition of C. W. Saxon.)

man was present. So for that reason we had to stagger the shifts of the Lawrence employees so when we were down where we had a few employees we would either have an order desk man in there or the Lawrence Warehouse man, but we did attempt one time to—and didn't meet with much success, I may say—of attempting to get Lawrence to allow us to make sales even though their man wasn't present because it was getting to the point we were losing a considerable amount of money and couldn't maintain a large group of personnel, so they did say we could make sales, which I made several of and you will find in the recap of sales tickets, people's initials on there who were not Lawrence men, but they wouldn't definitely let us make any sales unless a Lawrence man was there.

Q. Was that common practice for you or someone else to make sales out of your stock, that was not an employee of the Warehouse Company?

A. Yes, if a Lawrence employee was present.

Q. Was there any change in the procedure during the time you were there as manager? [80]

A. Do you mean in sales procedure?

Q. Yes.

A. Well, about the only change of any magnitude was that when I came with the company they had no salesmen at all, that is, outside salesmen, and we did build up a small sales force, but as far as the ticket handling and everything, there were no changes made that way.

(Deposition of C. W. Saxon.)

Q. You referred to sales out the back door, what do you mean by that?

A. Sales that the customer doesn't appear to buy merchandise but makes a phone call. For example, a man has a garage, and he is by himself in the garage. He can't close his garage to come in town. He calls in. That would be most of the orders that we sold. He would call in and call the order desk. The order desk was presided over by the warehouse manager. He would get the call and either he himself, or we did have from time to time until we finally got down to absolute rock bottom, assistants who worked under him, who were also on Lawrence, who would make the orders out, and the order desk man would make out the tickets and the delivery boy deliver them.

Q. Who got the money?

A. The money was regular billing form where they [81] have sales that came back in over the order desk, and it was billed at the end of the month.

Q. In the first instance a purchaser making a purchase there, would that remittance go to your company or the Lawrence Warehouse Company, do you understand what I mean?

A. I think I do.

Q. If for example, I went in and bought \$5 worth of stuff and gave a check for it, would that go to the Central Auto Sales or to the Lawrence Warehouse Company?

(Deposition of C. W. Saxon.)

A. The check itself—there is a couple of ways we can approach this, I hope I can make this clear. All billing naturally was taken—was made payable to Central Auto Supply because we felt that Central Auto Supply was in the business of selling auto parts, not Lawrence Warehouse, even though they had control of them. We did at the same time—I might say that most of the money or a great share of the money that came in as the result of those sales had to in turn be paid out for Lawrence pay-rolls and also for—depending on what our loan was at the bank, to keep our loan more or less even with them.

Q. In the first instance, however, the purchaser paid the money to Central Auto? [82]

A. The billing was made out that way.

Q. The actual remittance was received that way?

A. Yes.

Q. Were there signs in that building indicating Lawrence Warehouse had any interest in it?

A. Yes, there were.

Q. Where were they placed?

A. Well, they were placed at all the entrances as I remember, and I believe they were on each section—I can't state exactly, I can only state what I remember, but I believe they were on each of the gates and at the—I can say this, the premises covered by Lawrence were very well posted. In fact, every bin was posted that the commodity in them was the property of the Lawrence Warehouse Company.

(Deposition of C. W. Saxon.)

Q. Now this blueprint that I showed you, the red lines denote wire partitions, do they?

A. Not in all these, some of those are walls. This is really the front this way. The wire partitions would be along this section here.

Q. In direction, what is that?

A. That is just back of the counter. It closes the warehouse off from the main entrance.

Q. The main entrance faced which way? [83]

A. Faced north.

Q. Faced north, all right.

A. This is a wall.

Q. That is along the——

A. Along the west.

Q. The west? A. The east, rather.

Q. The east.

A. That is a wall along the back.

Q. Along the south?

A. The south. As a matter of fact, it is wall all the way with the exception of that.

Q. With the exception of where the gate is there?

A. This is the gate and this is the front.

Q. Now with respect to the property in the northwest corner.

A. That was wall all the way around with the exception of this entrance here which had a door.

Q. Now of the employees down there how many do you say were Central Auto Supply Company employees?

(Deposition of C. W. Saxon.)

A. Well, now, our number of employees varied. Would an average be what you are looking for?

Q. Yes, that would be all right. [84]

A. I would say the average number of Lawrence employees we had as I recall——

Q. I want the Central Auto Supply.

A. The Central Auto Supply?

Q. Yes.

A. Three in the shop—three men in the shop, one in the carburetor repair, that is four, two girls in the office. Six, myself would be seven, and the delivery boy would be eight. We did have some outside salesmen that varied from one to three or four.

Q. And the Lawrence Warehouse employees down there, about how many would that be?

A. We never had less than two. I believe at one time we had as high as five.

Q. And generally what was their job, what was their capacity?

A. Well, the prime or the main position held by any Lawrence man was the warehouse manager, the order desk and counter man, the second most important would be the counter man and the other three that I mentioned we had from time to time would be a second counter man and stock and inventory clerk.

Q. Now, distinguishing between the Central Auto Supply employees and the Lawrence Warehouse [85] employees, would the Central Auto

(Deposition of C. W. Saxon.)

Supply Company employees have access to the merchandise?

A. During working hours it was open, the place was open. We had access, we weren't kept out of there, no.

Q. Would one of your employees as distinguished from the Lawrence Warehouse Company go in and get items of merchandise and take them out?

A. That would happen, for example, when, say one of our employees might be assisting the regular counter man in making sales.

Q. Independently of that would it happen?

A. They all went over the counter, everything that went out of the back door was presided over by the warehouse manager and everything over the counter by the counter man.

Q. Assume that I had ordered something over the telephone from you and it was delivered to me in the way of you have detailed here, would there be anything to indicate to me that I was purchasing property of the Lawrence Warehouse Company?

A. To indicate that you were purchasing property of the Lawrence Warehouse Company?

Q. Yes.

Mr. Ray: I object to the question, it presumes a fact not in evidence that this was [86] the property of the Lawrence Warehouse Company, or that the Lawrence Warehouse Company claimed it to be its property.

(Deposition of C. W. Saxon.)

Mr. Perry: I think on that I will just withdraw the question.

Q. Under the same circumstances would there be anything that would indicate to me that that was property in the custody or warehoused with the Lawrence Warehouse Company?

A. I might say this, most of our customers were regular customers and you might say probably all of our accounts and our sales every month with the exception of new accounts coming in, would be classed as regular customers, and I think there wouldn't be one out of ten would not know that we were under Lawrence Warehouse. As a matter of fact we even had our saelsmen from time to time when they would go out—some of the sales resistance they met would be, "You fellows can't get parts," and we explained to them that we were under the Lawrence Warehouse and working under an agreement with the Bank, we could get what they wanted and could supply them, and most of our customers realized it, realized the fact we were under Lawrence. I could only say that they knew that. [87]

Q. Then other than the knowledge they gained in that fashion would there be anything that would indicate—

A. On the ticket there is nothing, in other words, on the ticket you might receive as a garage man there wouldn't be any indication it was Lawrence with the exception—no, there would be nothing that you could recognize.

(Deposition of C. W. Saxon.)

Q. And a sale over the counter, would there be anything there that would indicate that?

A. Definitely, because it would be almost impossible to walk into the building and buy anything over the counter without seeing 66 signs that said everything in the place was under the jurisdiction of Lawrence. As a matter of fact, it kind of took away from my display.

Q. Now, the Lawrence Warehouse Company employees that you refer to, had they been formerly your employees?

A. Yes, in most cases, although we hired some. We did most of the hiring and some of them went immediately under Lawrence.

Q. You would hire them and then put them under the Lawrence Warehouse Company payroll, is that right? A. Yes. [88]

Q. And were you there at the time this Lawrence Warehouse Company arrangement was made?

A. No, I was not.

Q. That was before your time?

A. That is right.

Q. And after you came there do you know whether employees that had been employed by the Central Auto Supply were continued in the employment of the Lawrence Warehouse Company?

A. There were employees there that were on Lawrence before I came that were also continued on Lawrence after I came, yes. Some of those were changed later on, they left and so forth and so on.

(Deposition of C. W. Saxon.)

Q. Who did the hiring and firing of Lawrence Warehouse Company employees?

A. Well, I did the hiring. There was very little firing done. The Lawrence Warehouse did that, what firing was done.

Q. But you hired the employees that went on the Lawrence payroll? A. Yes.

Mr. Perry: That is all. [89]

Cross-Examination

By Mr. Ray:

Q. As a matter of fact, Lawrence Warehouse Company had a written contract of employment with each employee? A. That is correct.

Q. You didn't sign that for Lawrence?

A. No, sir.

Q. Mr. Mitchell signed every contract of employment? A. That is right.

Q. That fixed the rate of pay? A. Yes.

Q. So actually he employed them?

A. Yes, that is right. As a matter of fact, I screened them and he employed them after we screened them, to make sure they would be able to handle the business.

Q. At the time they were discharged a written termination of employment was signed by them and by Lawrence, is that not correct?

A. As far as I know, yes.

Q. You mentioned that the Central Auto reimbursed Lawrence for their salaries. They re-

(Deposition of C. W. Saxon.)

imbursed Lawrence for their salaries to the extent the Bank wouldn't reimburse them? [90]

A. Yes, that is what it was supposed to have been.

Q. In this case actually many times it was necessary for the Bank to pay us in order to get the employees paid, was it not?

A. That is correct.

Mr. Ray: I think that is all.

Redirect Examination

By Mr. Perry:

Q. I want to ask one or two further questions on direct. How often was the inventory checked there?

A. Well, the inventory was checked on a weekly basis from incoming and outgoing merchandise. Our terms with Lawrence and with the Bank was that we would submit a record of all incoming materials and all outgoing materials weekly. We did make several—let's see, I think we made one at the end of December, we made at least two complete inventories, that, is, detailed inventories, outside of the perpetual or constant.

Q. Was there a daily checkup made?

A. Yes, every evening.

Q. And that was made every day?

A. That wasn't made—we made a daily check of all of our sales for the simple reason we knew that we at different times had a different level of how much we could sell without reporting, so we

(Deposition of C. W. Saxon.)

had to make a check every day to make sure. If the limit was \$2500 a week, we could sell that, we had to make sure we hadn't sold \$3500 or \$4000. We had to stay under that weekly release.

Q. How much could you sell out of there without making a report to the Valley National Bank?

A. That was changed two or three different times. The average amount generally ran about \$2500 a week.

Q. What was it when you were first manager there?

A. When I first came in they had closed the thing completely. I don't think I could give you—I do know we complied with whatever the limit was that was set at different times, but we worked on three or four different agreements with the bank during the period I was there, one, for example, being no matter what we sold we assigned our accounts receivable, and at that time there wasn't any particular limit except the Bank was getting all the money that did come in, and I believe the figures that could be used would be from \$2000 to \$2500 a week, in that neighborhood. [92]

Q. You testified that you made a report to the Bank once a week. Originally was that once a day and then changed to once a week?

A. No, the setup was that we were to make weekly reports as far as inventory was concerned, but we did have a limit as to the amount of sales or amount of material that could be released during

(Deposition of C. W. Saxon.)

a given period. Now the way that—the only way that we could determine whether or not we were staying within those limits, was to make a daily recap of sales which I got every evening. In other words, the total sales out of the warehouse daily as came in on the tickets, so that I knew whatever that limitation was—there were two or three different limitations during that period, so I would know by Wednesday, Thursday, or Friday we hadn't exceeded the amount to be released.

Q. Those daily recaps, were they transmitted to the Bank?

A. No, the only time it would have been necessary to do that would be when we were over, and I am sorry there was no time during the period we were able to exceed that release.

Q. Then how did you make your payments to the Bank? [93]

A. Well, we worked also there on more than one arrangement, but it was on this basis, the bank during the greater portion of the period that I was manager, had loaned us approximately between 50 and 55 per cent of the book value of our inventory. That was changed at different times, one to 60, to 70, and once back to 60 and back to 70, I believe, again. Now, I think I can best explain this with an example. Let's say our inventory was \$50,000 and the Bank at that time was loaning us \$25,000 or 50 per cent. If at any time our inventory was to drop below the point that the Bank had loaned

(Deposition of C. W. Saxon.)

us we were to pay them in cash the difference between the amount of money they had loaned us and the lesser amount of our inventory, which, in other words, would always bring—keep the loan percentage at a constant figure or better.

Q. I may not have this straight in my mind, but originally I understood you to say that money that came in was paid over to Lawrence Warehouse Company by you?

A. No, that is not correct.

Q. That is not correct?

A. No, I say the moneys that came in would be paid—we paid to Lawrence for them to pay employees that they had, and also that that money was to be used where if we were behind, happened to get a little behind on Lawrence. We ran, no matter what our percentage happened to be, we always ran on a very close margin.

Q. If the Bank had loaned you say 55 per cent, a purchaser bought an item say \$10, what became of that \$10?

A. What became of the \$10 that would be received?

Q. Yes.

A. Well, it would be used—put in the bank either in our general account, depending on where we were with Lawrence.

Q. All right.

A. If the 55 per cent, if we were right on the margin—now that is something that would be very

(Deposition of C. W. Saxon.)

difficult to ascertain for the simple reason that I always tried to keep at least a few hundred dollars ahead of that percentage because I knew that if once we were to drop back of it, that at the end of the week the Bank would do one of two things, and as a matter of fact, they would probably do one thing, and that is close the thing to make us stop selling until we were to bring the thing back up to the proper amount. So it was not only to my advantage but I had to [95] keep that figure ahead of it. What would have happened if we had fallen behind, there would be only two things, the bank would have had to increase our loan a certain percentage or made us a loan on the outside. The way we got around it in one or two cases, we got some additional capital from stockholders when we knew we would be behind.

Q. I am not making myself clear, but say in the course of a day you took in \$500, was any portion of that paid to the Lawrence Warehouse Company?

A. Do you mean just as a matter of course?

Q. Yes.

A. No, not as a matter of turning the receipts over to the Lawrence Warehouse, no.

Q. What would you do with it, then?

A. We would put it in the bank.

Q. And then check against it?

A. Our running expenses, our overhead and so forth, as well as purchase material, paying Lawrence payrolls, keeping our loan current at the

(Deposition of C. W. Saxon.)

bank. We had about 35 different expenses in the course of operating the business and there were periods during that time that the bank had our accounts receivable. [96]

Q. Well, out of your receipts now, what did you pay the Lawrence Warehouse Company, just the payrolls?

A. That is the only direct payment we made to Lawrence Warehouse was their payrolls. In other words, the billing charges and so forth.

Q. For their services?

A. That is correct.

Q. But they didn't get, or did they, any fixed percentage of the sales?

A. Let's put it this way—no, they didn't, but we made—I can say we did not make out any checks or pay any cash to the Lawrence Warehouse Company, but we did make payments to the Bank both in cash and by check that kept the Lawrence loan at a specified level.

Mr. Ray: You mean kept the bank loan at a specified level? A. Yes, that is correct.

Q. (By Mr. Perry): The Lawrence Warehouse didn't have any loan at the Bank as far as you know?

A. I don't know enough of the relationship between the Bank and Lawrence to know.

Q. It was your loan at the bank? A. Yes.

Q. And out of the proceeds of these sales [97] the only money the Lawrence Warehouse Company

(Deposition of C. W. Saxon.)

would get would be its charges under its contract?

A. We paid them their expenses as billed to us direct. We made no other direct payments to them. What happened between the Bank and Lawrence is something else.

Q. Then after paying Lawrence Warehouse whatever you had you could either pay the Bank or use in your current expenses, is that correct?

A. I might say, unless it is already understood here, that practically everything that we paid and everything that went out of Central Auto Supply was done with the full knowledge—and you might say my business was with the Valley National Bank, as far as that end was concerned, and Lawrence Warehouse on the inside, because I have had Mitchell come and tell me to do this and not do that, and the Bank has told me to pay these bills and not pay those.

Q. Mitchell was the Lawrence Warehouse man, is that right? A. That is right.

Q. Within your knowledge, Mr. Saxon, were the creditors who sold goods to Central Auto Supply Company apprised of this Lawrence Warehouse agreement? [98]

A. Well, I would say they were apprised four or five different times. As a matter of fact, I got out form letters. I might say the only ones I might have missed might have been a few small ones in the City here, but from time to time all outside creditors were apprised of our actual condition. I even mimeographed balance sheets and sent to all of them.

(Deposition of C. W. Saxon.)

Q. Did you disclose in that this arrangement you had with the Lawrence Warehouse Company?

A. Very definitely.

Mr. Perry: That is all.

Recross-Examination

By Mr. Ray:

Q. At the present time do you know of any reason why you would not be available as a witness in this matter should it go to trial in March, 1948?

A. Not that I know of now.

Q. You expect to live in this area?

A. Yes.

Mr. Ray: No further questions.

Mr. Perry: Do you have any questions, Mr. Gust?

Mr. Gust: No. [99]

Mr. Perry: Do you want to waive signatures and everything on this?

Mr. Craig: Yes.

Mr. Craig: Mark these.

(Thereupon the documents were marked as Defendant Lawrence Warehouse Company's Exhibit E for identification.)

HAROLD A. MITCHELL

Redirect Examination

By Mr. Craig:

Q. Mr. Mitchell, I show you Defendant Law-

(Testimony of Harold A. Mitchell.)

rence Warehouse Company's Exhibit No. E for identification, and ask you what these instruments are?

A. That is an original and three copies of a warehouse receipt, Lawrence Warehouse Company warehouse receipt.

Q. Were those the type of receipts that were used throughout this transaction?

A. Exactly, they were non-negotiable warehouse receipts.

Q. Where did the first, the first green copy in that group go to?

A. The original was delivered to the bank, the second copy was delivered to the operating offices in Los Angeles.

Q. The operating office of whom?

A. The Lawrence Warehouse Company of Los Angeles. The second copy, the white copy was the warehouse manager's copy at our warehouse.

Q. That is the Lawrence Warehouse manager?

A. Yes, sir. The green copy was a copy for the Central Auto Supply, the depositor.

Q. Now, that is the last copy of the group?

A. The last green copy.

Mr. Craig: We offer these in evidence, Exhibit E in evidence.

Mr. Perry: We have no objection.

(Thereupon the documents were received as Defendant Lawrence Warehouse Company's Exhibit E in evidence.)

(Testimony of Harold A. Mitchell.)

Q. (By Mr. Craig): Now, Mr. Mitchel, again referring to Lawrence Warehouse Company's Exhibit E in evidence, I will ask you if the commodities or goods represented by each warehouse receipt was listed on the face of the receipt at the time of the issuance, or on a supplemental sheet thereto attached when the receipt itself was not large enough to carry the list of the inventory?

A. Well, the face of the receipt included the number of packages or units received into the [101] warehouse described as so many auto parts, supplies and accessories as per inventory attached thereto, which was the inventory in detail corresponding, of course, to the number of units shown on the face of the receipt, and the inventory was made a part of the receipt.

Q. Now, Mr. Mitchell, I show you Defendant Lawrence Warehouse Company's Exhibit No. F for identification and ask you what that is.

A. Well, that is a confirmation of delivery form that is used to list the commodities delivered from the warehouse under dealer instructions given to the Lawrence Warehouse Company by the Bank. I may explain that. In other words, that the Bank authorized us to deliver \$5000 at any one time. When we reached that limit, we then list the commodities on confirmation of deliveries. That went to the Bank and was signed by the Bank and returned to us. Until we receive a signed copy from the Bank, no more deliveries were made.

(Testimony of Harold A. Mitchell.)

Mr. Craig: We offer Defendant Lawrence Warehouse Company's Exhibit No. F for identification in evidence.

Mr. Perry: No objection.

(Thereupon the document was received and marked as Defendant Lawrence Warehouse Company's Exhibit F [102] in evidence.)

(Testimony of Harold A. Mitchell.)

Q. (By Mr. Craig): Now, Mr. Mitchell, at the conclusion of this transaction, when the Lawrence Warehouse Company withdrew and the business was wound up, there were then on the premises certain goods, wares and merchandise, were there not? A. Yes, sir.

Q. And were those goods and wares and merchandise under warehouse receipt at that time?

A. Yes, sir.

Q. And how did the inventory on hand compare with the outstanding warehouse receipts at that time, were they balanced?

A. We took an inventory beginning July 21st to approximately August 12th. That inventory checked in units with the balance of the warehouse receipts.

Q. And to whom were those goods delivered?

A. Those were delivered to the Bank approximately November 12th.

Q. Of what year? A. '47.

Mr. Craig: That is all. [103]

Recross-Examination

By Mr. Perry:

Q. How did you deliver them to the Bank, Mr. Mitchell?

A. By turning possession of our area over to the Bank, removing our signs, stock cards and blueprints. Of course the Bank signed a release for us on all balances of outstanding warehouse receipts.

(Testimony of Harold A. Mitchell.)

Q. You didn't move any of that stuff out of there, did you?

A. Not physically remove any merchandise.

Q. That was after the Trustee of Bankruptcy had been appointed by this Court?

A. Yes, sir; that was November 12th, I believe, approximately.

Q. What you did, you took a release from the Bank and left the stuff sitting there?

A. Yes, sir.

Mr. Perry: That is all.

Mr. Craig: That is all.

(The witness was excused.)

Mr. Craig: Mr. Miller. [104]

WILLIAM H. MILLER

was called as a witness on behalf of the Lawrence Warehouse Company and being first duly sworn, testified as follows:

Direct Examination

By Mr. Craig:

Q. Will you state your name?

A. William H. Miller.

Q. Where do you reside?

A. 526 East F Avenue, Glendale, Arizona.

Q. Where are you presently employed?

A. Car Life Service Company, 1525 West Van Buren.

(Testimony of William H. Miller.)

Q. Were you ever employed by the Lawrence Warehouse Company, Mr. Miller?

A. Yes, sir.

Q. When?

A. I believe that it started in 1946, approximately in July or August, I believe.

Q. And how long were you employed by the Lawrence Warehouse Company?

A. I would say for approximately a year.

Q. And in what capacity were you employed?

A. I was the Lawrence Warehouse manager.

Q. And where did you carry out your duties as warehouse manager?

A. I had a desk in the back of the parts department where all incoming merchandise was received, and all outgoing merchandise was shipped out.

Q. At what place?

A. I believe you have the photos there, we could point it out on that. It was behind the stock shelves.

Q. Was that on the premises designated as the Central Auto Supply Company business on East Adams Street in Phoenix?

A. Yes, sir.

Q. Were you employed as warehouse manager at any other locality, Mr. Miller?

A. No, sir.

Q. Now, did you sign an employment contract with the Lawrence Warehouse Company, Mr. Miller?

A. Yes, sir.

Q. And did you sign an application for a surety bond?

A. Yes, sir.

(Testimony of William H. Miller.)

Q. And by whom were you paid during your employment?

A. Lawrence Warehouse Company.

Q. Now, Mr. Miller, I show you Defendant Lawrence Warehouse Company's Exhibit E in evidence, which purports to be a non-negotiable warehouse receipt or receipts, and various copies thereof, and ask you if you are familiar with those [106] instruments? A. Yes, sir, I was.

Q. During the course of your employment, were you—at that time were you required, as one of your duties, to issue such warehouse receipts as warehouse manager? A. Yes, sir.

Q. And did you so issue them? A. Yes.

Q. Where did you sign those receipts, Mr. Miller?

A. It has a place here at the bottom that is supposed to be signed by a bonded warehouse manager.

Q. And that is where you signed those receipts when you were employed as warehouse manager?

A. Yes, sir.

Q. And where did you send the receipts?

A. One, the original, went to the Lawrence Warehouse Company, and one was kept in our files, and one, I believe, was sent to the bank. It has been some time ago, kind of hard to remember it now exactly.

Q. Now, Mr. Miller, I call your attention to the second copy, being the first white copy of this exhibit, being Defendant Lawrence Warehouse [107]

(Testimony of William H. Miller.)

Company's Exhibit E in evidence, and call your attention to the back of that second copy where there is provided a place for signature by the depositor. Now, do you know, in the course of your duties, who the depositor was in this transaction.

A. Well, the depositor, I don't quite understand your question.

Q. Well, do you know whether or not you were required to have a signature to be entered there at that place?

A. Yes, there was supposed to be signed, but I don't recall by whom.

Q. Do you recall whether or not you required a representative of the Central Auto Supply to sign that instrument at that place?

A. I believe it was. It was the depositor and then signed by one of the owners.

Q. One of the owners or officers of that company?

A. Yes, sir.

Q. Now, in the course of your work down there, Mr. Miller, were you called upon to complete and fill out and deliver confirmation sheets in the same form as Defendant Lawrence Warehouse Company's No. F in evidence? [108]

A. Yes, sir.

Q. And did you fill out those forms during the entire time you were working there as warehouse manager?

A. Yes, sir.

Q. Now, Mr. Miller, do you know whether or not the premises where you were working as warehouse

(Testimony of William H. Miller.)

manager were locked at all times that you or some representative of the Lawrence Warehouse Company was not present on those premises?

A. Yes, sir; they were locked up every evening upon leaving when the bonded employees were gone.

Q. Do you know whether they were locked at any other time?

A. They were locked at all times that there was not a bonded employee there.

Mr. Craig: That is all.

Cross-Examination

By Mr. Perry:

Q. Before you went to work for the Lawrence Warehouse Company, were you employed by the Central Auto Supply Company? A. Yes, sir.

Q. For how long?

A. I went to work for—it was originally the Arizona Piston Service Company in '45, I believe it was.

Q. And you stayed with them until this arrangement was made with the Lawrence Warehouse Company? A. Yes, sir.

Q. And then your employer after that was the Lawrence Warehouse? A. Yes, sir.

Q. But you were still right there on the place of the Central Auto Supply Company, is that right?

A. Yes, sir.

Mr. Perry: That is all.

Mr. Craig: That is all.

(The witness was excused.)

Mr. Craig: Mr. Wildman.

AUSTIN K. WILDMAN

was called as a witness on behalf of the defendant Lawrence Warehouse Company and being first duly sworn, testified as follows:

Direct Examination

By Mr. Craig:

Q. Will you state your name, please?

A. Austin K. Wildman.

Q. Where do you reside, Mr. Wildman?

A. 1318 East Whitton Avenue, Phoenix. [110]

Q. By whom are you employed?

A. Five Points Ice Company at the present time.

Q. Were you ever employed by the Valley National Bank of Phoenix? A. Yes.

Q. When?

A. In '42, December, '42, to January, '49.

Q. What was your capacity while you were employed by the Valley National Bank?

A. I was assistant Cashier and Loan Officer.

Q. During the course of your employment did you have occasion—occasion to enter into a transaction with the Lawrence Warehouse Company and the Central Auto Supply Company?

A. Yes, sir.

Q. Approximately at what time did you enter into any arrangement with those organizations?

A. I don't remember when I first started loaning money to the Central Auto Supply, but I believe it was late in '45 or early in '46.

(Testimony of Austin K. Wildman.)

Q. Now, Mr. Wildman, will you explain to the Court just how you came to loan money to the Central Auto Supply Company, and what security, if any, you demanded upon such loan, and how they secured or arranged for it, if at all?

A. Well, the first loan, as I recall, was in [111] connection with their new building that they built at 601 East Adams Street. That was secured by a real estate mortgage and an assignment of their accounts receivable. Later on, the assigned accounts receivable were released and they substituted therefor a chattel mortgage on their then equipment, and then about the middle of '46, they had moved into this new building and were short on inventory and wanted to make arrangements to increase that inventory. At that time they arranged with the Lawrence Warehouse Company to warehouse their inventory and the Bank agreed to accept those Lawrence Warehouse receipts covering this inventory as security on additional loans. I don't remember the exact amount that we started out loaning, I think it was around 60 or 65 per cent of the Central Auto Supply's cost of the inventory. That was continued then until the Central Auto Supply filed a petition in bankruptcy. There was, oh, different arrangements made from time to time. The Central Auto Supply went through quite a trying experience financially there in '46, because their chief source of supply was on strike and the strike lasted for several months. They were buying where and

(Testimony of Austin K. Wildman.)

when they could get anything that they could resell. [112] So, we had to work pretty close with them because they could never keep the account on the satisfactory basis that it was originally set up.

Q. Now, Mr. Wildman, can you explain to the Court the mechanics of handling these—this merchandise and inventory with respect to these warehouse receipts, so far as the Bank was concerned?

A. Well, to start with, they brought in one receipt covering all of the inventory that had been placed in the Lawrence Warehouse. We made a loan on a certain per cent of that—the value of that inventory that was placed in the Lawrence Warehouse. The arrangement through a written authorization that we gave to the Lawrence Warehouse, they could deliver upon request of the Central Auto Supply, inventory up to a certain dollar amount. When it reached that dollar amount, and I don't recall what its release provisions were, a release would be prepared on what they called a "confirmation of delivery". That confirmation of delivery would be brought into the Bank; one copy would bear the signature of an officer of the Central Auto Supply, indicating that that merchandise had been delivered to them. They would bring in a check equal to the same [113] percentage that we had loaned on that merchandise. In other words, if it was 65 per cent that we had loaned on it, they would bring in a check with that release, that check to apply to reduce the loan. They would bring in—

(Testimony of Austin K. Wildman.)

the Bank would then execute that release when they had received the payment on it. Now, under the authorization given by the Bank to Lawrence, they required that those confirmation of deliveries be submitted at least once each week. If the commodities delivered reached a certain dollar value before the week was out, they would have to bring them in and get them executed, get the Bank to sign a release before they could deliver more merchandise.

Q. And at the same time would they be required to bring in a check for the amount covering that?

A. Yes, that is the way the transaction started out. Now, later on, they would be short of funds, so—and having received additional merchandise they would sometimes bring in another warehouse receipt covering merchandise of a value approximately of what was being released and we would accept that as substitute collateral in place of reducing the loan.

Q. And under those circumstances you would then also execute a confirmation of delivery and let the Warehouse Company deliver further goods?

A. Yes, that would be a means of effecting the substitution.

Q. In other words, they were just paying with more goods for security rather than paying in money? A. That is right.

Q. And Mr. Wildman, with respect to those confirmation of delivery sheets, were they in all

(Testimony of Austin K. Wildman.)

cases returned to the Lawrence Warehouse Company?

A. Those came in to us in triplicate. The original was sent to the Lawrence Warehouse Company's Los Angeles office, one copy was retained by the Bank for their record, and one copy returned to the Lawrence Warehouse manager at the warehouse.

Q. Now, throughout these negotiations, Mr. Wildman, and throughout this credit arrangement, did you, on behalf of the Bank, actually deliver to the Lawrence Warehouse instructions with respect to the releasing of these goods?

A. Yes, that was written instructions, and when there is any change made, we write complete new instructions.

Q. And were those instructions also delivered to the Central Auto Supply, or were they advised of such instructions?

A. No, I—those instructions would be written up in triplicate and usually sent to the Lawrence Warehouse Company's office at Los Angeles, although sometimes they would be delivered to Mr. Mitchell or some other Lawrence Warehouse examiner here in Phoenix.

Q. Now, Mr. Wildman, when this transaction or transactions terminated with the Petition for Bankruptcy of the Central Auto Supply Company, did you receive the goods then in storage at the Lawrence Warehouse Company's warehouse there?

(Testimony of Austin K. Wildman.)

A. Well, that was received under the terms of an order entered into by the Referee in Bankruptcy, I believe.

Q. To refresh your recollection, Mr. Wildman, wasn't a stipulation entered into between the Bank and the Referee or Trustee in Bankruptcy with respect to the delivery of these goods?

A. It was.

Q. And did you give the Lawrence Warehouse Company the releases for those goods and merchandise that were then in storage?

A. We released—we gave them a release for the merchandise and paid the balance of the Central Auto Supply account owing to the Lawrence Warehouse Company.

Q. You paid the charges that the Lawrence Warehouse Company had made against the Central Auto [116] Supply for its service, the Bank actually paid those to the Lawrence Warehouse Company? A. That is right.

Q. Why did you make that payment to the Lawrence Warehouse Company?

A. Because they had custody of the inventory and in that position had a warehouseman's lien for the amount due them.

Q. Therefore, in order for you to get possession of the goods you were required to pay the Lawrence Warehouse Company? A. That is right.

Mr. Craig: That is all.

(Testimony of Austin K. Wildman.)

Cross-Examination

By Mr. Perry:

Q. Mr. Wildman, that stipulation that you referred to, that was not entered into until January 5th, 1948, was it? A. I'd have to see.

Q. You don't remember. May I have that, please (Addressing the Clerk)? I show you this document from the original files in this case and ask you if that is the Stipulation that you referred to, being identified by the Clerk's Letter No. 9?

The Court: If that is the stipulation, why [117] don't you stipulate to it?

Mr. Craig: Well, it is the stipulation, but there is no date on it. There is a filing date on top.

The Court: Maybe it's the same as the day it was filed.

Mr. Criag: I don't know when it was filed, I wasn't here. Do you know when it was actually signed?

Mr. Perry: Oh, my recollection is, it was within a few days before that filing date.

The Witness: This is the stipulation I was referring to.

Mr. Perry: All right.

The Witness: We had taken possession before that date.

Mr. Perry: How did you take possession, Mr. Wildman? Did you take that away from the Trustee in Bankrutcy?

(Testimony of Austin K. Wildman.)

A. The Trustee in Bankruptcy never had it.

Q. And what did you do with it when you took possession, you left it right there, didn't you?

A. We took the keys to the padlocks and to the building——

Q. Now, they were given to you by the Lawrence Warehouse Company, weren't they? [118]

A. That is right.

Q. And when was that, do you recall?

A. I believe it was in November, but the exact date I can't recall.

Q. It was long prior to the signing of this stipulation, wasn't it? A. Yes.

Q. About how long before that?

A. Apparently this stipulation was entered into about the first of January, say, probably six weeks, two months, before that.

Q. And the way you took possession was simply that the Lawrence Warehouse Company turned the keys over to you, is that right?

A. We gave them the release or receipt for the inventory that was there.

Q. The goods stayed right there in the Central Auto Supply Company's place of business, in that portion of it that had been leased to the Lawrence Warehouse Company? A. That is right.

Q. You didn't move anything out of there until this stipulation was made, did you?

A. There was an agreement considerably ahead of this for the entering into this stipulation, Mr.

(Testimony of Austin K. Wildman.)

Perry, and I believe that we did start selling [119] somewhat before that.

Q. In any event, what I am getting at is that the things stayed right there in the warehouse until after this stipulation was entered into, unless there was some portions of it that were sold prior to that time by agreement between the parties?

A. Yes. As I recall, I asked—called up Mr. Gust and asked him to get us something in writing so we would have it in the file on this.

Mr. Perry: Yes. Mr. Craig has shown me a copy of an order authorizing the stipulation which was entered by the Referee apparently on November 17th, 1947.

Q. Now, Mr. Wildman, did you have financial statements from the Central Auto Supply Company when you made these loans?

A. We had a statement from time to time. Some periods there we had them monthly.

Q. Do you know if they are available here in court? A. No, I don't.

Mr. Perry: Do you have them, Mr. Gust?

Mr. Gust: What is it?

Mr. Prery: The financial statements that the Bank took from the Central Auto Supply. [120]

Mr. Gust: I doubt if I have them. There may be some.

Mr. Perry: In any event, when you made the original loan for security on the real estate mortgage, you took a financial statement then, did you?

(Testimony of Austin K. Wildman.)

A. Yes.

Q. And later when you loaned on the security of the chattel mortgage on the equipment, you took a financial statement, did you?

Mr. Craig: Oh, if the Court please, we object to this particular line of questioning as being wholly immaterial to the issues involved in this case.

The Court: It might be material, I can see where it would be.

The Witness: Well, we had fairly current statements from time to time, and just when we took those statements, I couldn't say from memory.

Mr. Perry: Probably as much as every month during this period of time?

A. When they were in difficulties we were getting them quite often.

Q. Now, Mr. Wildman, it is a fact, isn't it, that on every one of these financial statements there was listed bills payable or accounts payable of the Central Auto Supply to wholesalers and manufacturers and distributors for merchandise that had been purchased and not paid for?

A. They list all accounts payable. They didn't say what they are generally.

Q. Do you recall anything about the amounts of them?

A. No. They increased quite sharply on towards the last. I do recall that.

Q. You knew, of course, that the Central Auto Supply was buying merchandise on open account?

(Testimony of Austin K. Wildman.)

A. Yes.

Q. And they owed for it? A. Yes.

Q. Now, you never—you did take a chattel mortgage on the equipment at one time?

A. That is right.

Q. But you never took or attempted to take any chattel mortgage on their stock of merchandise?

A. No.

Q. And why? What was the reason for that, Mr. Wildman?

Mr. Craig: Oh, we object to that, if the Court please.

The Court: I didn't know you could do that.

Mr. Perry: Well, you can't, that is just the point, if the Court please. [122]

The Court: Well, I guess that is the reason they didn't do it.

Mr. Perry: All right.

The Witness: It is not the Bank's practice.

The Court: You can't do that.

Mr. Perry: You understood that you could not, under the Arizona law, take a chattel mortgage on stock of merchandise of this Central Auto Supply Company?

Mr. Craig: I object to that, if the Court please.

The Court: Well, if he didn't, Mr. Gust did.

Mr. Perry: All right.

Q. Now, had the Valley National Bank been financing under this Lawrence Warehouse plan for some time before this Central Auto Supply transaction? A. Yes.

(Testimony of Austin K. Wildman.)

Q. Somewhat along the same lines?

A. Yes.

Q. And you considered this loan or these loans to the Central Auto Supply Company as secured loans, is that right?

A. That is right, and so carried on one of our records.

Q. Upon security of this stock of merchandise as represented by the warehouse receipts that were given to you?

A. We call them warehouse receipt loans.

Q. But back of the warehouse receipts, the security was the stock of merchandise, is that right?

A. Yes.

Mr. Perry: I think that is all.

Redirect Examination

By Mr. Craig:

Q. Mr. Wildman, this form of field warehousing was filed in this transaction and is not an uncommon practice in the commercial world, is it?

A. No, it is used throughout the country.

Mr. Craig: That is all.

Mr. Perry: That is all

(The witness was excused.)

Mr. Craig: Mr. Riley.

WILLIAM J. RILEY

was called as a witness on behalf of the Lawrence Warehouse Company, and being first duly sworn, testified as follows:

Direct Examination

By Mr. Craig:

Q. Will you state your name, please? [124]

A. William J. Riley.

Q. Where do you reside?

A. 38 South Temple Drive, Mesa.

Q. By whom are you employed?

A. Western Auto Supply in Mesa.

Q. Were you ever employed by the Lawrence Warehouse Company? A. Yes, sir.

Q. In what capacity?

A. Warehouse manager at Central Auto Supply.

Q. And in any other capacity at any other place?

A. No.

Q. Now, when were you warehouse manager there?

A. Oh, from along in March, '47, until bankruptcy.

Q. Now, during your term as warehouse manager, Mr. Riley, were you called upon at various times to issue warehouse receipts for commodities placed in custody of the Lawrence Warehouse Company? A. Yes, sir.

Q. And to whom were those warehouse receipts issued?

A. Well, as has been stated before, they were made up weekly unless some stuff had been drawn

(Testimony of William J. Riley.)

then or allowed, and then we would make one out if we were running close to the limit at any time, and take them to the Bank, get the releases signed, and carry on the business. One would go to the Lawrence Warehouse Company at Los Angeles, the Bank would retain one and I would keep one.

Q. Are you talking—the latter part of your answer there, about the releases or about receipts?

A. The releases.

Q. Where did the receipts go?

A. Well, the bank got one of those, the Lawrence Warehouse in Los Angeles got one, the Central Auto Supply got one, and I had one.

Q. Now, referring to Defendant Lawrence Warehouse Company's Exhibit E in evidence, and with your attention particularly directed to the second sheet of that exhibit, being a white copy of a non-negotiable warehouse receipt, and particularly directing your attention to the back of that particular copy, as warehouse manager did you ever require a signature of any person at the place called "The Depositor"?

A. Yes, sir.

Q. And what person did you require to affix their signature before the issuance of a receipt?

A. In our file when I went to work they gave me a list of authorized signatures, the three major owners, I believe they were, in the [126] corporation.

Q. Of what corporation?

(Testimony of William J. Riley.)

A. The Central Auto Supply, and any one of those three could sign them.

Q. And did they sign them? A. Yes, sir.

Q. Now, during your term there, Mr. Riley, as warehouse manager, did you ever lock the premises that were designated as those leased by the Lawrence Warehouse Company?

A. Always locked them when there wasn't myself or one other bonded person there.

Q. And when would that take place?

A. Well, when I first went to work there, there was three of us under bond by the Lawrence Warehouse Company and then there would be somebody there except at night. When we left at night it would be locked. Towards the end, I was the only bonded personnel employee, and at that time when I went to lunch I'd have to lock it or bring my lunch with me.

Q. Now, during your term as warehouse manager there, Mr. Riley, by whom were you paid?

A. Lawrence Warehouse.

Q. And during that period did you ever allow any person to enter those premises which were then leased to the Lawrence Warehouse Company without your presence or the presence of some other bonded person? A. No, sir.

Q. Did you ever allow any person to take any of the goods in your warehouse out of there without proper releases or proper instructions?

A. No, they never got them without proper channels.

(Testimony of William J. Riley.)

Q. Who were your superiors in your particular job there, Mr. Riley?

A. Mr. Mitchell and Mr. Jim Sasser.

Q. What was Mr. Saxon's position?

A. He was general manager of the Central Auto Supply.

Q. And what authority did he have over you?

A. Over me?

Q. Yes.

A. Well, he would set things going and never gave me any orders.

Q. Now, what was Mr. Mitchell's capacity?

A. Field representative of the Lawrence Warehouse, or district manager.

Q. Who was Mr. Sasser?

A. He was assistant to Mr. Mitchell. I don't know whether he was just an adviser here or not at the time. He wasn't here very long, I know.

Q. For the Lawrence Warehouse Company?

A. Yes, sir.

Q. And it was Mr. Sasser to whom you referred when I asked you who your immediate superiors were?

A. Yes, sir.

Q. It was Mr. Mitchell and Mr. Sasser?

A. Yes.

Q. Oh, I beg your pardon, I thought it was Saxon.

A. No, sir.

Q. Did you receive from either Mr. Sasser or Mr. Mitchell orders or instructions with respect to what materials should be released from the warehouse?

A. Yes, sir.

(Testimony of William J. Riley.)

Q. And how often did you receive those instructions?

A. Oh, whenever there was any change in instructions.

Q. They advised you as to how you should conduct the warehouse, is that right? A. Yes, sir.

Q. And did you release or let merchandise out of the warehouse only in accord with those instructions? [129] A. Yes, sir.

Q. Mr. Riley, how often did you have occasion to discuss the operation down there with either Mr. Mitchell or Mr. Sasser?

A. Well, they usually came by at least once a week.

Q. They ever come by more frequently than that?

A. Towards the end, yes. Sometimes they would be down there three or four days in a row and might miss a couple of days.

Q. Did you ever call them on the phone or discuss problems with them on the phone?

A. No, they were still around often enough that I could pretty well keep up with them.

Q. With respect to the records that you kept as warehouse manager, did you keep time records of the employees of the Lawrence Warehouse Company there?

A. Yes.

Q. And did you personally check those records when they were turned in for their pay?

A. Yes, sir. I was the one that mailed them to the Los Angeles office.

(Testimony of William J. Riley.)

Q. You mailed them yourself to the Los Angeles office? A. Yes.

Q. And the checks in payment of their wages came from where?

A. From the Los Angeles official office to me.

Q. To you. And did you distribute them to the other employees? A. Yes, sir.

Q. Do you know whether they received any compensation in addition to that from the Central Auto Supply Company?

A. No, but I don't believe that they did.

Mr. Craig: That is all.

Cross-Examination

By Mr. Perry:

Q. Mr. Riley, I understood you to say to Mr. Craig that if—that you never allowed any merchandise out without a proper release. What did you mean by that?

A. I said, through the proper channels, I believe, on that, that I was operating at the order desk, making out the tickets and checking and pricing myself, and the other personnel that was on the counter all the time, was a man on the counter that was bonded also, and we—I saw that my releases were in to the Bank and my warehouse receipts went through.

Q. You don't mean to tell us that if I went in there to buy one item that you had to get any releases from the Bank before you could sell it to me?

(Testimony of William J. Riley.)

A. No, sir; as long as I did not hit the \$2000 mark.

Q. You usually didn't get those releases until the week after the sale had been made, did you?

A. Not necessarily. As it ran, our sales weren't large enough to ever hit the \$2000 mark in any one week while I was there, so I was all right, but if they had of, I would have had to have another release.

Q. But you never did? A. That is right.

Q. So if I came in there and bought an item on Monday, you didn't get a release from the Bank for it until the following Saturday, did you?

A. That is right.

Mr. Perry: That is all.

Redirect Examiation

By Mr. Craig:

Q. Actually, what you got from the Bank was a confirmation of delivery, wasn't it, Mr. Riley?

A. Yes, authorizing delivery of that.

Q. Yes. [132] A. Yes, sir.

Q. And actually your instructions were to release commodities up to a certain value, is that right? A. Yes, sir.

Q. And that was given before you released the commodities, isn't that right? A. Yes, sir.

Q. And when you reached that point you stopped delivering? A. Yes, sir.

Q. Until you had further confirmation of delivery from the Bank in order to release further goods?

A. Yes, sir.

(Testimony of William J. Riley.)

Q. Is that right? A. Yes, sir.

Mr. Craig: That is all.

Recross-Examination

By Mr. Perry:

Q. You never did stop delivering, did you?

A. Yes.

Q. When was that? I mean prior to bankruptcy?

A. About three weeks prior to that I closed the gates. [133]

Q. For how long? A. One forenoon.

Q. Is that the only time? A. I think it is.

Q. What was the reason for that?

A. No money, overdrawn.

Q. But it wasn't because you had sold over the amount of the inventory? A. No, sir.

Q. That never did happen?

A. No, sir. It was when I took my delivery receipts to the Bank, there was no check to go with it.

Q. And so you closed down that day?

A. Yes, sir.

Q. Now, on what days did you take these delivery receipts to the Bank?

A. They were delivered on Tuesdays, I believe it was.

Q. For the week's business the week before?

A. Yes, sir.

Mr. Perry: That is all.

(Testimony of William J. Riley.)

Redirect Examination

By Mr. Craig:

Q. Now, on this occasion, Mr. Riley, when you took the delivery receipt to the Bank without any money, they would not authorize you to release any more goods, is that right? A. That is right.

Q. And that is why you would not, that is why you closed it up? A. Yes, sir.

Q. Did you reopen before you got any further authority? A. No, sir.

Mr. Craig: That is all.

Mr. Perry: That is all.

(The witness was excused.)

Mr. Craig: The defendants rest.

Mr. Perry: The plaintiff rests.

The Court: Do you want to submit this on briefs?

Mr. Perry: I think so, if the Court please.

The Court: All right, how much time would you like?

Mr. Craig: Well, we have a short memorandum right here, if the Court please, if you care to have it.

The Court: All right, give it to the Clerk. Well, that is your reply then to their opening?

Mr. Perry: Very well, your Honor. I have got so many briefs, may I have 20 days on that? [135]

The Court: Yes.

Mr. Craig: We have ten after that?

The Court: Yes.

(Thereupon the trial ended at 2:25 o'clock,
P.M. of the same day.) [136]

I hereby certify that the proceedings had upon the trial of the foregoing cause are contained fully and accurately in the shorthand record made by me thereof, and that the foregoing 136 typewritten pages constitute a full, true and accurate transcript of said shorthand record.

/s/ LOUIS L. BILLAR,
Official Reporter.

[Endorsed]: Filed February 24, 1950.

CLERK'S CERTIFICATE TO RECORD
ON APPEAL

United States of America,
District of Arizona—ss:

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the records, papers and files in the case of Ralph Barry, as Trustee in Bankruptcy, of Central Auto Supply Company, a corporation, Bankrupt, Plaintiff, vs. Lawrence Warehouse Company, a corporation, and The Valley National Bank of Phoenix, a national banking association, Defendants, numbered Civ-1102 Phoenix, on the Docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies of the minute entries are true and correct copies of the originals thereof remaining in my office in the city of Phoenix, State and District aforesaid.

I further certify that said original documents, and said copies of the minute entries, constitute the entire record on appeal in said case as designated in the Appellant's Designation filed therein and made a part of the record attached hereto, and the same are as follows, to wit:

1. Complaint filed September 19, 1947.
2. Answer to complaint (Lawrence Warehouse Company) filed October 15, 1947.
3. Answer of defendant The Valley National Bank of Phoenix, filed October 15, 1947.
4. Plaintiff's Exhibit No. 1 in evidence (leases) admitted and filed March 17, 1949.
5. Plaintiff's Exhibit No. 2 in evidence (deposition of Harry Stack) admitted and filed March 17, 1949.
6. Plaintiff's Exhibit No. 3 in evidence (deposition of C. D. Cadot) admitted and filed March 17, 1949.
7. Plaintiff's Exhibit No. 4 in evidence (deposition of Paul S. Godber) admitted and filed March 17, 1949.
8. Plaintiff's Exhibit 5 in evidence (deposition of J. C. Baldwin) admitted and filed March 17, 1949.

9. Plaintiff's Exhibit No. 6 in evidence (deposition of E. R. Tolfree) admitted and filed March 17, 1949.

10. Plaintiff's Exhibit No. 7 in evidence (deposition of F. A. Warburton) admitted and filed March 17, 1949.

11. Plaintiff's Exhibit No. 8 in evidence (deposition of M. Blackburn) admitted and filed March 17, 1949.

12. Plaintiff's Exhibit No. 9 in evidence (deposition of David Shapiro) admitted and filed March 17, 1949.

13. Plaintiff's Exhibit No. 10 in evidence (deposition of F. C. Westphal) admitted and filed March 17, 1949.

14. Defendant Lawrence Warehouse Company's Exhibit A in evidence (group of photographs) admitted and filed March 17, 1949.

15. Defendant Lawrence Warehouse Company's Exhibit E in evidence (warehouse receipts) admitted and filed March 17, 1949.

16. Defendant Lawrence Warehouse Company's Exhibit F in evidence (confirmation of delivery sheet) admitted and filed March 17, 1949.

17. All minute orders entered on or after March 17, 1949, to wit:

17-a. Minute entry of March 17, 1949 (proceedings of trial).

17-b. Minute entry of October 5, 1949 (order of submission).

17-c. Minute entry of November 3, 1949 (order that defendants have judgment).

17-d. Minute entry of February 23, 1950 (order denying Plaintiff's Motion for New Trial, docketed February 23, 1950).

18. Defendant's proposed findings of fact, conclusions of law and judgment filed December 13, 1949, signed by trial judge, and refiled and docketed January 17, 1950.

19. Plaintiff's objections to findings of fact and conclusions of law proposed by defendants, filed December 16, 1949.

20. Plaintiff's motion for a new trial, filed January 19, 1950.

21. Reporter's transcript filed February 24, 1950.

22. Plaintiff's notice of appeal, filed February 27, 1950.

23. Statement of points upon which plaintiff intends to rely upon his appeal filed February 28, 1950.

24. Plaintiff's Designation of Contents of Record on Appeal, filed February 28, 1950.

I further certify that the Clerk's fee for preparing and certifying this said record on appeal amounts to the sum of \$4.40 and that said sum has been paid to me by counsel for the appellants.

Witness my hand and the seal of said Court this 24th day of March, 1950.

[Seal] /s/ WM. H. LOVELESS,
Clerk.

[Endorsed]: No. 12515. United States Court of Appeals for the Ninth Circuit. Ralph Barry, as Trustee in Bankruptcy of Central Auto Supply Company, a corporation, bankrupt, Appellant, vs. Lawrence Warehouse Company, a corporation, and The Valley National Bank of Phoenix, a National Banking Association, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed March 29, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

United States Court of Appeals for the
Ninth Circuit

No. 12515

RALPH BARRY, as Trustee in Bankruptcy of
CENTRAL AUTO SUPPLY COMPANY, a
Corporation, Bankrupt,

Appellant,

vs.

LAWRENCE WAREHOUSE COMPANY, a Cor-
poration, and THE VALLEY NATIONAL
BANK OF PHOENIX, a National Banking
Association,

Appellees.

APPELLANT'S STATEMENT OF POINTS
AND DESIGNATION OF RECORD TO BE
PRINTED.

Statement of Points

Appellant intends to rely upon his appeal herein upon the points set forth in his "Statement of Points Upon Which Plaintiff Intends to Rely Upon His Appeal," filed by him in the United States District Court for the District of Arizona February 28, 1950 (to which Reference is hereby made), and included in the record transmitted by the Clerk of the United States District Court for the District of Arizona to the Clerk of the United States Court of Appeals for the Ninth Circuit.

Designation of Record to be Printed

Appellant designates for printing herein the following portions of the record:

1. The complaint filed September 19, 1947.
2. Answer to complaint (Lawrence Warehouse Company) filed October 15, 1947.
3. Answer of defendant The Valley National Bank of Phoenix, filed October 15, 1947.
4. Plaintiff's Exhibit No. 1 in evidence (leases) omitting therefrom, however, any plats which are duplicates of the plat first thereto attached.
5. Plaintiff's Exhibit No. 2 in evidence (deposition of Harry Stack), omitting therefrom, however, everything except the questions propounded to the witness and his answers thereto.
6. Plaintiff's Exhibit No. 3 in evidence (deposition of C. D. Cadot), omitting therefrom, however, everything except the questions propounded to the witness and his answers thereto.
7. Plaintiff's Exhibit No. 4 in evidence (deposition of Paul S. Godber), omitting therefrom, however, everything except the questions propounded to the witness and his answers thereto.
8. Plaintiff's Exhibit No. 5 in evidence (deposition of J. C. Baldwin), omitting therefrom, however, everything except the questions propounded to the witness and his answers thereto.
9. Plaintiff's Exhibit No. 6 in evidence (deposition of E. R. Tolfree), omitting therefrom, however, everything except the questions propounded to the witness and his answers thereto.

10. Plaintiff's Exhibit No. 7 in evidence (deposition of F. A. Warburton), omitting therefrom, however, everything except the questions propounded to the witness and his answers thereto.

11. Plaintiff's Exhibit No. 8 in evidence (deposition of M. Blackburn), omitting therefrom, however, everything except the questions propounded to the witness and his answers thereto.

12. Plaintiff's Exhibit No. 9 in evidence (deposition of David Shapiro), omitting therefrom, however, everything except the questions propounded to the witness and his answers thereto.

13. Plaintiff's Exhibit No. 10 in evidence (deposition of F. C. Westphal), omitting therefrom, however, everything except the questions propounded to the witness and his answers thereto.

14. The original only of defendant Lawrence Warehouse Company's Exhibit E in evidence (warehouse receipts). Do not print the second, third and fourth copies—only the original.

15. The original only of defendant Lawrence Warehouse Company's Exhibit F in evidence (confirmation of delivery sheet). Do not print the second and third copies—only the original.

16. Minute order of March 17, 1949.

17. Minute order of October 5, 1949.

18. Minute order of November 3, 1949.

19. Minute order of February 23, 1950.

20. Defendant's proposed findings of fact, conclusions of law and judgment filed December 13, 1949, signed by trial judge, and refiled January 17, 1950.

21. Plaintiff's objections to findings of fact and conclusions of law proposed by defendants, filed December 16, 1949.

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24. Plaintiff's notice of appeal, filed February 27, 1950.

25. Statement of points upon which plaintiff intends to rely upon his appeal filed February 28, 1950.

26. Designation of contents of record on appeal, filed February 28, 1950.

/s/ ALLAN K. PERRY,

Attorney for Appellee.

On the 25th day of March, 1950, I mailed a true and correct copy of the foregoing document to counsel for appellees, viz. one copy thereof to Fennemore, Craig, Allen & Bledsoe, Phoenix National Bank Building, Phoenix, Arizona, and one copy thereof to Gust, Rosenfeld, Divelbess, Robinette & Linton, Security Building, Phoenix, Arizona.

/s/ ALLAN K. PERRY.

[Endorsed]: Filed March 29, 1950.